

Exhibit BBB

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12:22:13 1 November 17, 2016, 12:30 p.m., no morning session; just
12:22:13 2 afternoon, volume 4.

12:23:08 3 Realtime seems to be working great! Just in case,
12:23:14 4 I'll keep my fingers crossed.

12:29:49 5 THE CLERK: Case number 10 C 1168, Fields v. City of
12:29:57 6 Chicago.

12:29:57 7 THE COURT: Good morning. Good afternoon.

12:29:58 8 MR. LOEVY: Good afternoon, your Honor, Jon Loevy,
12:30:00 9 Steve Art, Ann Swaminathan, Candace Gorman for our client
12:30:11 10 Nathson Fields.

12:30:12 11 MR. BURNS: .

12:30:13 12 MR. KULWIN: Shelly Kulwin and Rachel Katz on behalf
12:30:16 13 of Detective O'Callaghan.

12:30:17 14 MR. LOEVY: Your Honor, we are not going to do the
12:30:19 15 field trip this afternoon. We would like to start the
12:30:22 16 testimony. You had deferred the issue about the feet. Our
12:30:25 17 preference would be to just move.

12:30:27 18 MR. KULWIN: Having said that, Judge, you said 12:29
12:30:30 19 have the transcript with the 80 feet. I've got it for you.

12:30:33 20 THE COURT: In fact, it is 12:29. Okay. I'll look
12:30:38 21 at it. Since we are not going to deal with it right now, I'll
12:30:42 22 look at it.

12:30:42 23 Did you have another issue, Mr. Kulwin, that you
12:30:45 24 wanted to take up?

12:30:47 25 MR. KULWIN: No, that was it.

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12:30:49 1 THE COURT: Oh, that was it.

12:30:51 2 Get him on the witness stand.

12:31:14 3 MR. BURNS: Judge, if we may before you bring the
12:31:18 4 jury out.

12:31:20 5 THE COURT: The jury is coming out.. that's why I
12:31:23 6 asked if anybody has any issues.

12:31:24 7 MR. BURNS: It's the question as to Mr. Stainthorpe
12:31:28 8 representing plaintiffs in cases against the City of Chicago.
12:31:31 9 We asked.

12:31:35 10 THE COURT: I can't hear.

12:31:37 11 MR. BURNS: We have a concern that it would open up
12:31:39 12 issues relative to his filing of other issues against the City
12:31:42 13 of Chicago. Our purpose would be simply to ask does he file
12:31:46 14 those without inviting or opening, if the Court believes we
12:31:49 15 would be opening the door, to discussion as to other cases.

12:31:51 16 THE COURT: What exactly are you planning to ask him?
12:31:54 17 Do you file lawsuits against the City of Chicago?

12:31:56 18 MR. BURNS: As part of that, yes, your Honor.

12:31:57 19 THE COURT: Yes, and then you move on or what?

12:32:01 20 MR. BURNS: Yes. We are not getting into the
12:32:03 21 details.

12:32:03 22 THE COURT: It's one question?

12:32:05 23 MR. BURNS: It really is, Judge.

12:32:06 24 MR. LOEVY: We had wanted to ask him you had through
12:32:08 25 your work some familiarity with the policies and practices,

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12:32:12 1 that's why sent a lot of subpoenas for the investigative and
12:32:13 2 sent four of them because he wasn't getting investigative
12:32:15 3 files back. I am glad we are talking about it because I
12:32:18 4 wanted to ask him isn't it true for why the policy got changed
12:32:24 5 in the mid '80s, you had some involvement with the policy
12:32:27 6 change.

12:32:28 7 As far as the issue about whether to ask him about
12:32:30 8 whether he does suits against the City of Chicago, I guess I
12:32:33 9 can live with the one question. Does that open the door to
12:32:36 10 what kind, I'm okay with with that.

12:32:38 11 THE COURT: It doesn't open the door to him talking
12:32:42 12 about the issue of other suits.

12:32:44 13 MR. BURNS: As far as the other issue, that's being
12:32:47 14 that hasn't been disclosed previously, his policies,
12:32:50 15 practices, when they were changed from the City of Chicago.

12:32:52 16 THE COURT: You know what, a question will be asked,
12:32:54 17 you'll make an objection, we will rule on it:?

12:33:41 18 (The jury enters the courtroom.)

12:33:42 19 THE COURT: Everyone can have a seat: We are ready to
12:33:46 20 start. Mr. Stainthorpe, remember you are still under oath.

12:33:51 21 THE WITNESS: Yes.

12:33:54 22 - - -

12:33:54 23 JOHN STAINTHORPE, DIRECT EXAMINATION CONTINUED

12:33:54 24 BY MR. LOEVY:

12:33:56 25 Q. Mr. Stainthorpe, Mr. Randy Langston. Do you remember

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12:33:59 1 that?

12:33:59 2 A. I do. It was my partner who -- from Randy, yes, that was
12:34:03 3 Tim who got that statement.

12:34:05 4 Q. When you and him visited Randy on the south side?

12:34:08 5 A. No.

12:34:08 6 Q. That was Gerald?

12:34:09 7 A. No. Tim got the statement when he visited Randy in some
12:34:13 8 institution. I am not sure it was an institution, a prison or
12:34:19 9 whatever, and then he had the affidavit, that was produced to
12:34:23 10 the state, and I believe subsequently, possibly before, but I
12:34:29 11 am pretty sure subsequently Tim and I went to see Randy when
12:34:32 12 he's out on the street and we talked to him when he was out in
12:34:34 13 the street on the south side.

12:34:35 14 Q. And that's what you talked about yesterday?

12:34:37 15 A. Correct.

12:34:37 16 Q. All right. And then you then communicated to the state's
12:34:42 17 attorney what Mr. Laura and you had learned?

12:34:46 18 A. That is correct.

12:34:47 19 Q. And they communicated back to you in a manner that you
12:34:51 20 described in that letter that you sent and confirmed?

12:34:55 21 A. That's correct, yes.

12:34:56 22 Q. And what did the state's attorney communicate back to you?

12:34:59 23 A. They communicated.

12:35:00 24 MR. BURNS: Objection, your Honor. Hearsay, your

12:35:02 25 Honor.

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12:35:03 1 THE COURT: For what purpose is this being offered?

12:35:05 2 MR. LOEVY: Because what the state's attorney sent
12:35:07 3 back to him, not for the truth, they sent back the new Randy
12:35:10 4 affidavit. I was just backing up to that where we left off.

12:35:12 5 THE COURT: The objection is overruled. Go ahead.

12:35:14 6 THE WITNESS: Yes. First of all, the arrest had
12:35:19 7 orally told me that Randy gave me a new statement.

12:35:23 8 MR. KULWIN: I'll object to that, the oral statement.

12:35:26 9 THE COURT: I overruled the objection. Does
12:35:31 10 everybody get it now? Go ahead.

12:35:35 11 THE WITNESS: Okay. So the state's attorney had it
12:35:38 12 would me that, orally, I believe in a court appearance, that
12:35:42 13 they had then gone out to reinvestigate -- to re-enter view
12:35:46 14 Randy Langston, he had given another statement in which he
12:35:50 15 denied his -- he contradicted his trial testimony, said that
12:35:56 16 he could not see the faces of the shooters at the time of the
12:36:00 17 shooting because they had masks on.

12:36:00 18 BY MR. LOEVY:

12:36:02 19 Q. And --

12:36:03 20 A. And Mr. Kelley told me that he was going to memorialize
12:36:06 21 this in a written document. I never received that written
12:36:10 22 document.

12:36:11 23 Q. Then you sent the letter?

12:36:12 24 A. I sent the letter, and I subsequently did get the written
12:36:16 25 document memorializing Randy Langston's new statement.

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12:36:21 1 MR. LOEVY: Your Honor, at this time, we move
12:36:23 2 Plaintiff's Exhibit 131 into evidence. This is the letter
12:36:28 3 that Mr. Stainthorpe described.

12:36:30 4 THE COURT: Is this the one sitting up here?

12:36:31 5 MR. LOEVY: It might be the copy.

12:36:33 6 THE COURT: Can I just look at it for a second? All
12:36:40 7 right. It's admitted.

12:36:42 8 (Above-mentioned exhibit was received in evidence.)

12:36:43 9 BY MR. LOEVY:

12:36:44 10 Q. Did the state's attorney send something back?

12:36:46 11 A. Yes.

12:36:46 12 Q. What was that?

12:36:47 13 A. Sent back a written document that memorialized the new
12:36:51 14 statement that Randy Langston had given apparently to the
12:36:54 15 state's attorneys and their vectors in which he acknowledged
12:36:58 16 that he could not see the faces.

12:37:00 17 Q. I'm going to show that document. That is Plaintiff's
12:37:04 18 Exhibit 132 which is in evidence, your Honor?

12:37:05 19 THE COURT: Okay.

12:37:08 20 BY MR. LOEVY:

12:37:09 21 Q. Can you tell the jury or identify that this is the
12:37:10 22 document you're talking about?

12:37:11 23 A. Yes, this is the document that I subsequently received
12:37:16 24 from David Kelley.

12:37:18 25 Q. All right. And this memorialized a statement that the

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12:37:21 1 state's attorneys took with Randy Langston at his home,
12:37:24 2 correct?

12:37:24 3 A. Yes.

12:37:25 4 Q. All right. And this paragraph here refers to what Randy,
12:37:34 5 this is after Randy had gone back and forth about whether he
12:37:37 6 did or didn't see the masks, correct?

12:37:39 7 A. Correct.

12:37:39 8 Q. What is his position as of February 29th, 2000?

12:37:44 9 A. His position as of that time was that the men who he saw
12:37:53 10 doing the shooting wore masks at all times during the shooting
12:37:58 11 and that so they were masked the entire time and then they ran
12:38:05 12 back through the breezeway while still masked.

12:38:09 13 Q. Now, this -- now he's saying that he saw them in the get
12:38:12 14 away car, does he not, that's how he saw their faces?

12:38:16 15 A. Well, I don't think it's entirely clear that he's saying
12:38:20 16 that he saw their faces.

12:38:22 17 MR. BURNS: Judge, objection.

12:38:23 18 THE COURT: Time out. Time out. The answer is
12:38:25 19 stricken. I think he was just asking you to read it. Put
12:38:27 20 your question again. The answer is stricken. The jury is
12:38:30 21 directed to disregard it.

12:38:31 22 MR. LOEVY: May I ask a different question, your
12:38:33 23 Honor?

12:38:33 24 THE COURT: Yes.

12:38:34 25 BY MR. LOEVY:

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12:38:34 1 Q. He was asked why he had recanted -- why he had recanted,
12:38:39 2 correct?

12:38:39 3 A. That's correct.

12:38:40 4 Q. Can you read his answer?

12:38:41 5 A. Because at that time I did not want to be involved or be
12:38:45 6 bothered with it anymore.

12:38:48 7 Q. Did he in this statement in anyplace to your review of it
12:38:51 8 say that he recanted earlier because of supposed threats by
12:38:54 9 gangs or any other threats?

12:38:56 10 A. No, not at all.

12:38:57 11 Q. I'd like to turn your attention to another witness in the
12:38:59 12 case, Gerald Morris. Do you -- can you sort of summarize for
12:39:04 13 the jury based on your review what Gerald Morris' role in the
12:39:09 14 case was?

12:39:09 15 A. Gerald Morris had testified at the trial, this is back in
12:39:16 16 the mid '80s, that he had been in his apartment which was in
12:39:20 17 the back of the building, of the CHA building. And I think he
12:39:25 18 said he was getting dressed and he heard shots. He then
12:39:31 19 looked out of the window with his girlfriend and saw two men
12:39:38 20 running to a car that was parked on the street and at trial,
12:39:48 21 he identified Nathson Fields and Earl Hawkins as those men.

12:39:56 22 Q. All right. When you interviewed Randy?

12:39:59 23 A. We are talking about Gerald now.

12:40:00 24 Q. I'm sorry. I'm really bad with names. We are talking
12:40:03 25 about Gerald.

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12:40:04 1 Was there an issue about from the first trial about
12:40:08 2 when Gerald became identified as a witness? Was he identified
12:40:12 3 early or later?
12:40:13 4 A. There was an issue about that because according to the
12:40:17 5 police reports, he had first been identified as a witness more
12:40:22 6 than a year after this had occurred. But Mr. Morris said in
12:40:28 7 his testimony, I believe, said that he had talked to the
12:40:32 8 police right away, so immediately after the incident be.
12:40:35 9 Q. When did you go see Gerald?
12:40:37 10 A. I went -- I saw him twice, both times in 1999, first time
12:40:43 11 in June, second time I think in August.
12:40:45 12 Q. And this is 13 years after the criminal trial when you're
12:40:49 13 working on the appeal, correct?
12:40:50 14 A. Well, no. Actually, at this point, the case -- I had --
12:40:58 15 we had prevailed in the post conviction. The state appealed
12:41:03 16 that, it had been affirmed by the Illinois Supreme Court, and
12:41:07 17 case had been remanded for a new trial.
12:41:10 18 Q. So you were investigating --
12:41:12 19 A. So at this point, I am investigating the case for the
12:41:15 20 purposes of the new trial.
12:41:17 21 Q. When you went to see Gerald Morris, who went with you?
12:41:23 22 A. The first time I went with my partner, Tim lawyer, the
12:41:26 23 same person that talked to Randy.
12:41:27 24 Q. Did the state give you Randy's -- Gerald's address?
12:41:31 25 A. No, they did not.

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12:41:33 1 Q. Did you ask for it?

12:41:34 2 A. I asked for it and they objected to giving it to me so we
12:41:42 3 went ahead and found it ourselves.

12:41:43 4 Q. How did you find it?

12:41:44 5 A. In the phone book.

12:41:46 6 Q. What did you do when you got his address?

12:41:47 7 A. We went around to his house, and we talked to him.

12:41:51 8 Q. And did he know you were coming?

12:41:53 9 A. No, he did not.

12:41:54 10 Q. As a defense attorney, is there anything unusual in
12:41:57 11 knocking on somebody's door to talk to them without giving
12:42:00 12 them prior notice you're coming?

12:42:02 13 MR. KULWIN: I am going to object, asked and answered
12:42:04 14 and expert testimony.

12:42:05 15 THE COURT: It's not expert testimony. So that part
12:42:07 16 of the objection is overruled. But you did ask this question,
12:42:11 17 so that part is sustained.

12:42:12 18 MR. LOEVY: Okay.

12:42:12 19 BY MR. LOEVY:

12:42:13 20 Q. Did Gerald express any reluctance to talk to you, do you
12:42:17 21 remember any reluctance?

12:42:18 22 MR. KULWIN: Judge, I am going to object to leading.

12:42:20 23 THE COURT: Overruled.

12:42:21 24 THE WITNESS: He had no hesitation in talking to me
12:42:25 25 at all.

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12:42:25 1 BY MR. LOEVY:

12:42:26 2 Q. All right. What did you ask him, what did he tell you?

12:42:28 3 A. I referred back to his trial testimony, I said, look, you
12:42:32 4 were a witness at the trial of Nathson Fields, I now represent
12:42:35 5 Nathson Fields, and can you tell me was this testimony
12:42:40 6 accurate and correct.

12:42:43 7 Q. What did he say?

12:42:44 8 A. He said, no, it was.

12:42:45 9 Q. What did he tell you about that?

12:42:46 10 A. He told me that he actually could not see the faces of the
12:42:52 11 people who were running through the parking lot or running to
12:42:56 12 the parking lot, and that he actually was unable to identify
12:43:03 13 who these people were, and I then, because I knew he had
12:43:08 14 identified them at trial, so I said and also at a lineup, I
12:43:13 15 believe, so I said to him, well, how did you make an
12:43:17 16 identification then? How did you identify these people.

12:43:20 17 Q. And what did he say?

12:43:21 18 A. He said by intuition.

12:43:23 19 Q. All right. And did he -- did he -- did you take notes
12:43:28 20 during his statement?

12:43:29 21 A. No. During the statement, no.

12:43:31 22 Q. All right. What was the explanation for why he couldn't
12:43:36 23 see the people well enough to make an identification?

12:43:38 24 A. Because they were still wearing masks.

12:43:40 25 Q. Which direction were they running from him?

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12:43:44 1 A. They were running away from him. He said they were
12:43:46 2 running on a diagonal, so not right below the building but on
12:43:51 3 a diagonal to a car.

12:43:52 4 MR. LOEVY: Your Honor, may I ask Mr. Stainthorpe to
12:43:55 5 come down and show on the diagram the direction.

12:43:57 6 THE COURT: That's fine. If others need to see, you
12:43:59 7 can move to the other side of the courtroom.

12:44:01 8 BY MR. LOEVY:

12:44:01 9 Q. Mr. Stainthorpe, if you could orient the jury. The
12:44:03 10 shooting happened in the front of the building, right?

12:44:05 11 A. Yes.

12:44:05 12 Q. This is the building?

12:44:06 13 A. Yes.

12:44:06 14 Q. Are you oriented?

12:44:08 15 A. Here is the shooting. Gerald Morris is somewhere back
12:44:12 16 here, exactly how far over, I am in the sure.

12:44:14 17 Q. Somewhere back here?

12:44:16 18 A. Somewhere over here, so he can't see in the front. He can
12:44:19 19 only see the back, and then.

12:44:21 20 Q. The tunnel goes through the building?

12:44:23 21 A. The tunnel goes like this, and then he said he saw the men
12:44:29 22 running up on a diagonal over there.

12:44:30 23 Q. This is a parking lot with cars and you can't really see
12:44:33 24 it in the picture?

12:44:34 25 A. That's correct.

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12:44:34 1 Q. Did he say -- did he have any memory exactly where the car
12:44:37 2 was all those years later or just a general idea?

12:44:39 3 A. My recollection is I thought he said it was on the street,
12:44:42 4 but, you know what, I don't have a real clear recollection of
12:44:45 5 that.

12:44:46 6 Q. The men would have been running away from him at that
12:44:48 7 time, correct?

12:44:49 8 A. Yes, correct.

12:44:50 9 Q. Thank you. .

12:45:04 10 All right. Did you have any communications ^ with
12:45:09 11 anybody before you went to see Gerald Morris in in other
12:45:13 12 words, did you have -- did El Rukn, anybody associated with
12:45:17 13 the El Rukn street gang communicate with you in any way before
12:45:22 14 going to see him?

12:45:23 15 A. Absolutely not. I was going to see him because he
12:45:26 16 obviously was an important witness and I wanted to see. Yeah,
12:45:30 17 I wanted to see what he was going to say.

12:45:32 18 Q. All right. You did file the post conviction petition,
12:45:34 19 correct?

12:45:35 20 A. I did.

12:45:35 21 Q. And what were some of the arguments you raised, do you
12:45:39 22 recall?

12:45:39 23 A. So, initially, I filed two, I believe.

12:45:42 24 Q. Let's start with the first one.

12:45:43 25 A. Okay. So the first one is filed in 1991 shortly after I

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12:45:49 1 got the case. There was a time limit. It had to be within
12:45:53 2 six months of resolution of direct appeal. So the primary
12:45:59 3 issues that I raised in that post conviction were allegations
12:46:02 4 of ineffective assistance of counsel.
12:46:06 5 Q. Basically that the trial lawyer could have done a better
12:46:09 6 job?
12:46:09 7 A. Exactly, both in terms of the guilt, innocence phase and
12:46:13 8 also in terms of the sentencing phase.
12:46:16 9 Q. Any other arguments?
12:46:17 10 A. There were other arguments. There had been this somewhat
12:46:23 11 bizarre proceeding in the -- at the trial where after the
12:46:29 12 judge had found them guilty, the defense lawyers had brought a
12:46:35 13 motion to appoint a special prosecutor alleging that they had
12:46:39 14 been subjected to death threats, and.
12:46:43 15 Q. Mr. Stainthorpe, let me lead you here?
12:46:45 16 A. Yeah.
12:46:46 17 Q. The death penalty was unconstitutional, correct?
12:46:47 18 A. That was an allegation.
12:46:49 19 Q. And there was no evidence of guilt an allegation, correct?
12:46:52 20 A. That is correct.
12:46:52 21 Q. All right. Did you explain to Nate that you were trying
12:46:56 22 to make arguments that would help him save, you know, win the
12:47:00 23 appeal?
12:47:00 24 A. Oh, absolutely, yes.
12:47:02 25 Q. And was -- did you explain to him that you weren't going

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12:47:05 1 to get a lot of chances for that?

12:47:06 2 A. You get one chance for post conviction. You can amend the
12:47:10 3 post conviction, but that's it.

12:47:11 4 Q. All right. In the five years after Nate's conviction, did
12:47:15 5 you ever raise the argument that the trial was corrupted?

12:47:19 6 A. Well, yes, I did, because.

12:47:21 7 Q. Before you got to the second petition. I'm saying until
12:47:24 8 you got to the second petition when you filed the first one,
12:47:27 9 was there any argument that there was any kind of problem with
12:47:30 10 the bribe?

12:47:30 11 A. Oh, no. I was completely unaware of any allegation of a
12:47:34 12 bribe at the time of filing the first petition.

12:47:37 13 Q. Did Nate give you every opportunity -- did you give Nate
12:47:41 14 every opportunity to help you make arguments to save his life?

12:47:45 15 A. Oh, yeah. Obviously, as I said I went to talk to him, I
12:47:49 16 would talk about the petition. I believe he had to verify the
12:47:53 17 petition too.

12:47:53 18 Q. All right. Did you at any time have any knowledge that
12:47:56 19 this was an argument that you could raise after talking to Mr.
12:47:59 20 Fields?

12:47:59 21 A. No the at all.

12:48:00 22 Q. All right. Let's change topics, sir.

12:48:03 23 Your office represented -- how many people in your
12:48:05 24 office at the time?

12:48:05 25 A. Of this?

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12:48:07 1 Q. Yeah.

12:48:07 2 A. Probably around eight.

12:48:11 3 Q. All right. And there was another lawyer who represented
12:48:13 4 another participant at the trial, correct? Do you remember
12:48:18 5 George Carter?

12:48:19 6 A. Okay.

12:48:20 7 Q. Not at the trial, I'm sorry, another person who was
12:48:23 8 accused of the crime, right?

12:48:27 9 THE COURT: Why don't you restate the question. Slow
12:48:29 10 it down a little bit.

12:48:30 11 MR. LOEVY: All right.

12:48:31 12 THE COURT: And just ask clearer questions.

12:48:33 13 BY MR. LOEVY:

12:48:33 14 Q. Did anybody in your office represent anybody that had a
12:48:36 15 connection to the case?

12:48:37 16 A. Yes.

12:48:39 17 Q. Who was that?

12:48:39 18 A. My partner at the time, Peter /SPHA0*EL, who was a member
12:48:46 19 of the Federal Defender panel had represented in federal
12:48:49 20 court, so different court system, George Carter, who.

12:48:56 21 THE COURT: That's the answer to the question. Ask
12:48:58 22 another question.

12:48:58 23 BY MR. LOEVY:

12:48:58 24 Q. All right. Did you have -- did you coordinate defenses
12:49:01 25 with George Carter's attorney in any way?

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12:49:03 1 A. No.

12:49:03 2 Q. All right. Let's talk about the subpoenas that you served

12:49:09 3 prior to the retrial.

12:49:10 4 You got ready to do the retrial with Mr. Fields,

12:49:13 5 correct?

12:49:14 6 A. Yes, that is correct.

12:49:15 7 Q. And you did some investigation?

12:49:17 8 A. Yes.

12:49:17 9 Q. Did you serve some subpoenas?

12:49:19 10 A. I did.

12:49:19 11 Q. Tell us what you did and why?

12:49:21 12 A. Okay. So the first subpoena actually dates from 1991. So

12:49:28 13 that's from when I was dealing with the post conviction

12:49:31 14 petition. And then subsequently after we had won the post

12:49:38 15 conviction and it came back for a retrial, I sent three

12:49:41 16 additional subpoenas.

12:49:41 17 Q. What did -- really briefly, what is a subpoena?

12:49:45 18 A. A subpoena is essentially a legal order to someone. It's

12:49:50 19 signed by either the clerk or the attorney, and it is a legal

12:49:54 20 order to someone or an institution, to produce certain

12:49:59 21 documents.

12:49:59 22 Q. All right. And what did you serve -- seek in serving

12:50:04 23 those subpoenas?

12:50:05 24 A. I sought every police report, memorandum, notes, informal

12:50:13 25 notes, street files, detective files, running files. I tried

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12:50:18 1 to be as complete as possible in terms of asking for every
12:50:22 2 document that conceivably pertained to Nathson Fields's case.

12:50:27 3 MR. LOEVY: Your Honor, at this time we move
12:50:29 4 Plaintiff's Exhibit 31 into evidence. These are the
12:50:31 5 subpoenas.

12:50:33 6 MR. BURNS: Just a minute.

12:50:37 7 MR. NOLAND: No objection, your Honor.

12:50:38 8 THE COURT: Hang on one second. I am now thinking
12:50:43 9 that maybe the microphones at the tables have been turned back
12:50:46 10 on. Sorry. I will turn those off. What's the exhibit number
12:50:51 11 again Mr. Loevy?

12:50:53 12 MR. LOEVY: 31.

12:50:53 13 THE COURT: It's admitted.

12:50:55 14 (Above-mentioned exhibit was received in evidence.)

12:50:56 15 BY MR. LOEVY:

12:50:57 16 Q. This is the subpoena you served, correct?

12:50:58 17 A. This is the one from 1991.

12:51:00 18 Q. All right. And showing you the request, by the way, in
12:51:03 19 your work at your office, you sometimes bring lawsuits against
12:51:06 20 the City of Chicago, correct?

12:51:07 21 A. That is correct.

12:51:07 22 Q. And by doing that, you've gained some familiarity with the
12:51:11 23 record keeping and file keeping practices of the department,
12:51:13 24 correct?

12:51:14 25 A. That is correct.

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12:51:14 1 Q. All right. Showing you what you sought, can you summarize
12:51:19 2 for the -- that's basically what you answered, right, you
12:51:22 3 sought every kind of name for what the investigative file is?

12:51:25 4 A. Correct. I knew the police officers and especially the
12:51:32 5 detectives kept files under several, they called them several
12:51:35 6 different things, so I tried to include every name that I had
12:51:38 7 ever heard.

12:51:39 8 Q. All right. And turning you to page 4 of the same exhibit,
12:51:44 9 you received this response on what date, sir?

12:51:46 10 A. Okay. No -- okay. Actually, I think it's June the 12th.

12:51:54 11 Q. In any event, a memo dated June the 10th?

12:51:56 12 A. June 12th, 1991, so I get a response to this subpoena, and
12:52:03 13 it is from the commander of detective division Area 1 which
12:52:09 14 says there are no documents on file at detective division Area
12:52:13 15 1 pertaining to the above subject.

12:52:14 16 Q. All right. What did you do when you got back that there
12:52:18 17 are no such investigative files?

12:52:20 18 A. Well, at that point, I didn't pursue it further. At that
12:52:23 19 point, I was dealing with the post conviction and nothing came
12:52:27 20 up.

12:52:27 21 Q. Did you subsequently serve additional subpoenas?

12:52:30 22 A. Yes. So several years later when the case is now back for
12:52:35 23 retrial, I served three additional subpoenas.

12:52:37 24 Q. And did you receive any -- did you receive the
12:52:41 25 investigative file in response to those subpoenas, sir?

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12:52:43 1 A. I did not.

12:52:45 2 Q. What did you get back? Did you get back any new documents
12:52:49 3 that you previously didn't have?

12:52:50 4 A. Yes, I believe I got a photograph of -- that appeared to
12:52:56 5 be of a lineup with someone holding up Mr. Fields' shirt.

12:52:59 6 Q. All right. Showing you Defendant's Exhibit 88, page 5,
12:53:03 7 this is in evidence, your Honor?

12:53:05 8 THE COURT: Okay.

12:53:06 9 BY MR. LOEVY:

12:53:06 10 Q. This is a copy of the photo you got back?

12:53:09 11 A. Yes.

12:53:10 12 Q. And this had not previously been disclosed?

12:53:12 13 A. Correct.

12:53:13 14 Q. Showing you the same exhibit, page 2, had the lineup photo
12:53:17 15 been disclosed?

12:53:18 16 A. You know what, I am not sure whether that had been
12:53:25 17 disclosed.

12:53:25 18 Q. If you are not sure, it's best to say you are not sure.

12:53:28 19 Let's turn your attention back to the post conviction
12:53:30 20 petition. There is a reference in there, is there not, that
12:53:35 21 you have had a chance to review to a high ranking for Mr.

12:53:40 22 Fields. Do you remember that reference?

12:53:41 23 A. I do.

12:53:41 24 Q. Having reviewed the document, correct?

12:53:43 25 A. Yes.

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12:53:43 1 Q. Do you have any personal knowledge about the El Rukns,
12:53:45 2 whether an officer is high ranking or how high ranking an
12:53:48 3 officer is?

12:53:49 4 A. I don't. I know very little about the El Rukns.

12:53:51 5 Q. All right. What was the outcome of the petition, that
12:53:55 6 first one?

12:53:55 7 A. Well, the first -- it was amended. I amended it about a
12:53:59 8 year later.

12:54:00 9 Q. And was that to include when you learned about the
12:54:02 10 allegations of the bribe?

12:54:04 11 A. Yeah, because subsequently Judge Maloney, who was the
12:54:07 12 trial judge who had presided over Nathson's case was indicted
12:54:14 13 for taking a \$10,000 bribe in the case and then returning it.

12:54:17 14 Q. All right. What year was that?

12:54:18 15 A. I think that was 92.

12:54:20 16 Q. And did you then catch your legal filings up to this new
12:54:24 17 information?

12:54:24 18 A. That and another issue also.

12:54:27 19 Q. What was Nate's -- what did the Court do to your revised
12:54:31 20 petition?

12:54:32 21 A. After some litigation, the petition was granted and so
12:54:41 22 both the conviction and the death sentence were vacated.

12:54:43 23 Q. All right. Were you able to communicate that to Mr.
12:54:46 24 Fields?

12:54:46 25 A. Yes.

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12:54:47 1 Q. All right. Do you remember his reaction?

12:54:49 2 A. Well, I think he was very relieved.

12:54:52 3 Q. All right. But was he free of the charges?

12:54:54 4 A. No.

12:54:56 5 Q. There was a retrial pending, correct?

12:54:58 6 A. Well, actually, there's another step before that.

12:55:01 7 Q. What was the next step?

12:55:03 8 A. Okay. So the next step is that the state appealed Judge

12:55:07 9 Dooling's decision to the Illinois Supreme Court. All death

12:55:12 10 penalty cases, they don't go to the enter media appellate

12:55:15 11 court, they go directly to the Illinois Supreme Court, so the

12:55:18 12 state appealed Judge Dooling's decision to the Illinois

12:55:22 13 Supreme Court. I represented Nathson during that appeal, did

12:55:27 14 the oral argument and the Illinois Supreme Court affirmed

12:55:32 15 Judge Dooling's decision vacating both the conviction and the

12:55:34 16 sentence.

12:55:35 17 Q. All right. Were you getting paid for all this

12:55:37 18 professional work, sir?

12:55:38 19 A. A little bit. I was still appointed via the capital

12:55:42 20 resource center.

12:55:44 21 Q. And did there come a point where you were no longer

12:55:47 22 getting paid by the capital resource center?

12:55:49 23 A. Yes. After the case was remanded to the Circuit Court of

12:55:54 24 Cook County, the state decided that they were not going to

12:55:59 25 pursue the death penalty anymore.

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12:56:02 1 Q. And that meant you were not able to get money?

12:56:05 2 A. At that point, I could no longer be appointed as a capital

12:56:09 3 defense lawyer because there was no death penalty, so at that

12:56:12 4 point, my official appointment ended.

12:56:16 5 Q. All right. Were you able to keep working for free, sir?

12:56:18 6 A. Well, it was almost free, but I did want to keep

12:56:26 7 representing Nathson in the case and we did enter into an

12:56:30 8 agreement that he and his family would pay me to continue

12:56:34 9 representing him, and so I actually represented him for quite

12:56:39 10 a while.

12:56:39 11 Q. How much money was him and his family able to come up

12:56:44 12 with?

12:56:45 13 A. \$4,000.

12:56:45 14 Q. Was that commence rate with the market value of the

12:56:49 15 services you were providing?

12:56:50 16 MR. KULWIN: Judge, I object, relevance.

12:56:53 17 THE COURT: Overruled.

12:56:55 18 THE WITNESS: I mean, I did a ton of work. It wasn't

12:56:57 19 even close.

12:56:58 20 BY MR. LOEY:

12:56:58 21 Q. Did you subsequently decide to withdraw?

12:56:59 22 A. Yes, sometime later, though, after I had represented him

12:57:02 23 for quite a while.

12:57:03 24 Q. All right. Did you take steps to ensure that he got new

12:57:06 25 counsel?

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12:57:07 1 A. Yes, I did.

12:57:07 2 Q. Who did you introduce him to?

12:57:09 3 A. He had contact with attorneys who were excellent attorneys
12:57:17 4 at the University of Chicago, shell and Gene Snyder.

12:57:23 5 Q. You mentioned the issue about Mr. Swano, Mr. Hawkins'
12:57:28 6 attorney bribing the judge. Did you take steps to investigate
12:57:30 7 that as part of your amended post conviction petition?

12:57:32 8 A. Well, I think the -- yes, but most of that was depending
12:57:39 9 on the prosecution of Judge Maloney, so I made myself familiar
12:57:46 10 with the information that came out.

12:57:48 11 Q. As part of the reply brief that you filed, the reply to
12:57:51 12 the petition that the jury read about yesterday, did you talk
12:57:54 13 to Mr. Smeeton?

12:57:57 14 A. I did talk to Mr. Smeeton.

12:57:59 15 Q. And what did your investigation uncover with that?

12:58:04 16 MR. BURNS: Objection, your Honor?

12:58:05 17 THE COURT: Can I see the lawyers at sidebar, please.

12:58:11 18 (The following proceedings were had at sidebar outside the
12:58:16 19 hearing of the jury:)

12:58:16 20 THE COURT: What do you expect the answer to be?

12:58:20 21 MR. LOEVY: He talked to Mr. Smeeton, he prepared an
12:58:24 22 affidavit, the affidavit confirmed that Nate had no
12:58:26 23 involvement and he filed it as part of the petition.

12:58:31 24 THE COURT: This is filed in the PC?

12:58:33 25 MR. LOEVY: Exhibit C to the reply.

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12:58:35 1 THE COURT: Oh, reply to what? The brief in front of
12:58:41 2 the trial court.

12:58:41 3 MR. LOEVY: I was told the reply in support of the
12:58:44 4 PC.

12:58:45 5 THE COURT: The trial court. Okay.

12:58:48 6 MR. LOEVY: I wasn't going to introduce the
12:58:50 7 affidavit.

12:58:50 8 THE COURT: Well, but you want to elicit from him
12:58:52 9 what Mr. Smeeton told him.

12:58:53 10 MR. LOEVY: Um-hmm.

12:58:54 11 THE COURT: Okay. And I guess what's the nature of
12:58:57 12 the objection?

12:58:58 13 MR. BURNS: First and foremost, your Honor, it's
12:59:00 14 hearsay.

12:59:01 15 THE COURT: Okay. Is there some non-hearsay basis
12:59:03 16 for which you think this is admissible?

12:59:05 17 MR. LOEVY: Well, it supports his investigation, it
12:59:08 18 completes the, you know, the investigation.

12:59:11 19 THE COURT: The objection is sustained.

12:59:13 20 (The following proceedings were had in open court in the
12:59:19 21 presence and hearing of the jury:)

12:59:19 22 THE COURT: All right. The objection is sustained.
12:59:21 23 BY MR. LOEVY:

12:59:21 24 Q. I am going to change topics, sir.

12:59:23 25 You mentioned yesterday that you went out to the

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12:59:27 1 scene and there was some measurements that you had referenced
12:59:31 2 earlier?

12:59:32 3 A. Yes.

12:59:32 4 Q. I am going to show you the trial testimony of
12:59:36 5 Mr. Smeeton's investigator, a man named Mr. Beseth. This is
12:59:44 6 page 512 of the trial testimony?

12:59:46 7 THE COURT: '86 trial?

12:59:47 8 MR. LOEVY: Yes, the first trial.

12:59:50 9 BY MR. LOEVY:

12:59:50 10 Q. And just to refresh your recollection since you
12:59:53 11 undoubtedly haven't memorized the transcript. Since the day
12:59:56 12 you made the plat, have you had occasion to measure the
12:59:59 13 distance from the pitching mound in the baseball field to the
01:00:01 14 corner of the breezeway. The answer why is, yes, I have.
01:00:04 15 What is that distance? Answer, 155 feet, approximately.

01:00:09 16 When you went to the scene, did you rely and review
01:00:12 17 that distance from the pitcher's mound to the breezeway?

01:00:15 18 A. Yes, and that seemed accurate.

01:00:17 19 Q. All right. I want to change topics again, sir.

01:00:20 20 You have subsequently learned in preparing to talk
01:00:23 21 about these issues at this trial that a new file showed up in
01:00:27 22 2010, 2011, correct?

01:00:30 23 A. That is correct.

01:00:30 24 Q. You have had a chance to review it and look through it
01:00:34 25 carefully?

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01:00:34 1 A. I have.

01:00:35 2 MR. LOEVY: That's Plaintiff's Exhibit 1, your Honor.

01:00:37 3 BY MR. LOEVY:

01:00:37 4 Q. That's the investigative file.

01:00:38 5 Had you had access to this investigative file during
01:00:41 6 your preparation of the criminal defense for Mr. Fields?

01:00:44 7 A. The majority of it, no. There is I think one police
01:00:48 8 report in there that I did have.

01:00:50 9 Q. All right. But the file itself, was that made available
01:00:53 10 to the defense?

01:00:54 11 A. No.

01:00:54 12 Q. All right. Let's talk about some of the things in it.

01:00:57 13 First of all, can you describe generally what this
01:01:00 14 investigative file is that showed up?

01:01:01 15 A. Well, it appears to be notes, memoranda, inform at reports
01:01:10 16 for the most part, so not formally written on Chicago Police
01:01:16 17 Department forms that relate to the investigation of the
01:01:21 18 Smith/Hickman murders.

01:01:22 19 Q. Is there any reference to Mr. Nathson Fields anywhere in
01:01:26 20 the investigative file?

01:01:27 21 A. There is not.

01:01:28 22 Q. All right. If you had had access to this file during the
01:01:35 23 investigative stage of preparing for the retrial, would you
01:01:39 24 have been able to investigate the leads and material within
01:01:42 25 it?

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01:01:42 1 A. I would have certainly I would have attempted to and the
01:01:47 2 file contains a lot of leads in terms of alternate suspects.
01:01:53 3 Q. Let's talk about it and let's go more question and answer.
01:01:57 4 A. Sure.
01:01:57 5 Q. So I don't get one-sided here.
01:02:01 6 Let's take a look at the documents related to Ricky
01:02:05 7 Baldwin's brother. You didn't know who Ricky Baldwin was back
01:02:09 8 when you represented Mr. Fields, correct?
01:02:10 9 A. I don't believe I did.
01:02:11 10 Q. All right. Showing you a copy of Plaintiff's Exhibit 1,
01:02:14 11 page 104?
01:02:17 12 MR. LOEVY: The investigative file is in evidence,
01:02:19 13 your Honor.
01:02:19 14 THE COURT: Okay.
01:02:20 15 BY MR. LOEVY:
01:02:20 16 Q. Describe --
01:02:21 17 THE COURT: This is 104, you said?
01:02:23 18 MR. LOEVY: It's 1, page 104.
01:02:25 19 THE COURT: Page 104 of Exhibit 1.
01:02:27 20 MR. LOEVY: Correct.
01:02:28 21 BY MR. LOEVY:
01:02:28 22 Q. This is a to from memo, correct, to from?
01:02:34 23 A. Yeah, okay.
01:02:35 24 Q. It does not bear a date, does it?
01:02:37 25 A. It does not.

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01:02:38 1 Q. All right. I am going to turn your attention to the first
01:02:41 2 paragraph, and I'll make you read it instead of me. Can you
01:02:46 3 read it.

01:02:46 4 A. Okay. No time to leave a supp. We interviewed Langston,
01:02:51 5 James, male, black, age 14, of '706 East 39th Street,
01:02:57 6 apartment 106. He witnessed the murders. He was playing
01:03:00 7 baseball across the street from the scene.

01:03:02 8 A. He said that the offenders were wearing skull caps pulled
01:03:06 9 over their faces to conceal their identity. He saw the
01:03:09 10 offenders fleeing in a blue Cadillac. He said the car went
01:03:12 11 south on Langley and then went on 39th. He said that there
01:03:15 12 were four men in the car. The person sitting -- it says
01:03:19 13 setting, I think it's sitting next to the driver in the front
01:03:22 14 seat was the brother of Ricky Baldwin, a/k/a, Rick dog, who
01:03:26 15 was murdered last summer. File number R. D. Number, see our
01:03:33 16 notes for more details.

01:03:35 17 Q. Okay. So this person, this Langston brother was claiming
01:03:38 18 that somebody in the car was a brother of Ricky Baldwin,
01:03:43 19 correct?

01:03:43 20 A. Yes.

01:03:43 21 Q. The second paragraph here says that the detectives showed
01:03:48 22 photos, probably to Mr. Loevy there, of two of the Baldwin
01:03:54 23 brothers, Shawn and Paul, correct?

01:03:55 24 A. Yes.

01:03:55 25 Q. And he did recognize Shawn as one of the Baldwins, but not

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01:03:59 1 the bald win brother he was talking?

01:04:03 2 A. Not the person in the car, right.

01:04:05 3 Q. You did not have any of this information back during the

01:04:07 4 criminal defense, right?

01:04:08 5 A. I don't believe I did.

01:04:09 6 Q. All right. Let's take a look at another page here. This

01:04:13 7 is also in the file. Be this is page 106. I'm sorry. I am

01:04:23 8 going to go straight to page 145 first.

01:04:26 9 This is would it be fair to characterize this as a

01:04:32 10 note, a handwritten note in the file?

01:04:35 11 A. It appears to be.

01:04:36 12 Q. It says they got an anonymous tip, right?

01:04:38 13 A. Yes.

01:04:39 14 Q. It says the guy driving the car was early -- was Ed

01:04:43 15 Stewart with Darryl Baldwin and Chico, correct?

01:04:47 16 A. Yes.

01:04:47 17 Q. And then it got further information, right?

01:04:50 18 A. Correct.

01:04:50 19 Q. So that is at least two people claiming that one of the

01:04:55 20 Baldwin brothers might have been involved in the shooting,

01:04:59 21 correct?

01:04:59 22 A. Yes.

01:04:59 23 Q. And then showing you the same exhibit, Page 91, a

01:05:03 24 different note on a different page, girlfriend of offender,

01:05:09 25 Jimmy green in Baldwin's home is Linda Smith and additional

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01:05:13 1 information including sister of Jerome Smith, right?

01:05:16 2 A. Yes.

01:05:16 3 Q. Do you have any idea why they were calling Jimmy green the
01:05:19 4 offender in the Baldwin home at this time?

01:05:21 5 A. Well, it looks like he had been charged in it.

01:05:24 6 MR. KULWIN: Objection, your Honor.

01:05:25 7 THE COURT: Yeah, the objection is sustained. Asking
01:05:27 8 why somebody else wrote something.

01:05:28 9 BY MR. LOEVY:

01:05:29 10 Q. But you have no knowledge, correct?

01:05:30 11 A. I do not.

01:05:33 12 Q. Okay. Let's take a look at page 106 of the same document,
01:05:38 13 and -- sorry, different document.

01:05:40 14 Describe what this is. It's called a general
01:05:42 15 progress report. It looks like it's undated and it's signed
01:05:45 16 by minute owe, does it not?

01:05:48 17 A. Yes.

01:05:48 18 Q. What is a general -- wait. Sorry. It's dated up here in
01:05:52 19 typing, May and April 1984?

01:05:56 20 A. Yes.

01:05:57 21 Q. What is a general progress report?

01:05:58 22 A. So this was the form that was created to -- that
01:06:05 23 detectives were supposed to memorialize their more informal
01:06:09 24 notes with respect to an investigation.

01:06:10 25 Q. All right. Let's take a look at the first paragraph. Can

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01:06:13 1 you read that paragraph? This also relates obviously to the
01:06:18 2 Smith/Hickman homicide?
01:06:20 3 A. Correct. The following information was provided to the R.
01:06:23 4 D.S, reporting detectives, by Mr. David m-i-n-n-i-f-i-e-l-d,
01:06:29 5 male black age 26 who was the utility janitor at Dearborn
01:06:33 6 homes, 2960 south federal, phone number. On 29th of April 84
01:06:37 7 at 2010 hours he received an on anonymous phone call from a
01:06:42 8 youthful male black. The Caller said he saw a phone number on
01:06:45 9 television, phone number, for persons with information
01:06:47 10 regarding this homicide. The Caller told motion in limine
01:06:50 11 that Edward Stewart was driving the car used in the murder and
01:06:54 12 that Stewart was in the company of Darryl Baldwin and Chico.
01:06:59 13 He also said that Stewart was living with Olivia Wallace at
01:07:03 14 4716 south Cottage Grove, apartment 220. He had no further
01:07:06 15 information.
01:07:07 16 Q. Now, at the bottom, it looks like this detective minute
01:07:10 17 owe did some investigation. Can you read the last sentence
01:07:12 18 there?
01:07:13 19 A. Yeah, it says s-t-e-w-a-r-s, photo, and also in the file,
01:07:19 20 there is not a record for Darryl Baldwin in the alpha file.
01:07:23 21 Q. All right. And there were some photos in the file, for
01:07:26 22 example, of Paul Baldwin, correct?
01:07:29 23 A. Yeah, the other two Baldwin brothers.
01:07:31 24 Q. But apparently, they could not find a photo of Darryl
01:07:36 25 Baldwin?

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01:07:36 1 A. That's what this appears to indicate.

01:07:38 2 Q. Did you see anything in the file that anybody took that
01:07:41 3 lead anything further trying to find a photo of Darryl and
01:07:44 4 show it to anybody?

01:07:45 5 A. No. as far as I recall, there's nothing in that
01:07:49 6 investigative file that shows any further investigation with
01:07:52 7 respect to that.

01:07:53 8 Q. If you had received this information back in 1999, what
01:07:57 9 would you have done?

01:07:57 10 A. I would have attempted to investigate this. This
01:08:02 11 obviously was potentially exculpatory information as providing
01:08:06 12 a version of events that contradicted the state's version of
01:08:10 13 events.

01:08:10 14 Q. Is alternate suspects the kind of thing that could be
01:08:13 15 useful to a criminal defense attorney?

01:08:15 16 A. It certainly could, that could be -- if it pans out, that
01:08:19 17 could be a viable form of defense.

01:08:20 18 Q. All right. Taking a look at this paragraph here, the one
01:08:25 19 immediately above it, Edward Stewart was allegedly the driver?

01:08:29 20 A. Yes.

01:08:29 21 Q. To summarize it, there's some background information, and
01:08:33 22 somebody has asked for his alibi it looks like. On the date
01:08:36 23 of his murder he was in his apartment and went to work, works
01:08:40 24 at McDonald's, he began his shift at 10:30, that's what it
01:08:44 25 says, correct?

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01:08:45 1 A. Correct.

01:08:45 2 Q. It also says we could not verify his alibi because
01:08:49 3 McDonald's was closed that day?

01:08:51 4 MR. KULWIN: Your Honor, I apologize. Our screens
01:08:53 5 don't -- they just went out.

01:08:55 6 THE COURT: Out out? Is it possible that you brushed
01:08:57 7 against the switch?

01:09:00 8 MR. KULWIN: Anything is possible, Judge. I didn't
01:09:02 9 mean to.

01:09:02 10 THE COURT: Both of yours went out?

01:09:05 11 MR. KULWIN: They both went out.

01:09:07 12 THE COURT: That suggests it's not a wire or
01:09:08 13 something. No slight intended to the people on that side of
01:09:50 14 the table. They need to see it more importantly than you.

01:09:53 15 Go ahead, Mr. Loevy.

01:09:54 16 MR. LOEVY:

01:09:55 17 BY MR. LOEVY:

01:09:56 18 Q. There is this sentence here, we could not verify his
01:09:58 19 alibi. McDonald's was closed. Do you see that?

01:10:01 20 A. I do.

01:10:02 21 Q. There was some ambiguity as to whether McDonald's was
01:10:05 22 closed during the time of his alibi or closed when they
01:10:08 23 checked?

01:10:09 24 MR. KULWIN: Objection, your Honor.

01:10:10 25 THE COURT: Overruled.

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01:10:11 1 THE WITNESS: Yes, I agree. That's an ambiguous
01:10:14 2 statement.
01:10:14 3 BY MR. LOEVY:
01:10:15 4 Q. Do you see anything in the file anywhere else that anybody
01:10:16 5 did anything else to determine whether Edward Stewart had a
01:10:17 6 viable alibi or not?
01:10:18 7 A. I didn't see anything.
01:10:19 8 Q. All right. There were other alternative suspects
01:10:23 9 identified in this investigative file, were there not?
01:10:26 10 A. There were.
01:10:27 11 Q. Do you remember reviewing the documents that you did
01:10:30 12 receive learning about a shooting of a man named Delbert
01:10:34 13 Edwards the night before somebody assassinated Fuddy Smith?
01:10:40 14 A. Yes.
01:10:40 15 Q. And this was in the police reports, was it not, that were
01:10:43 16 provided to Mr. Fields?
01:10:44 17 A. There was some information about that incident in a police
01:10:47 18 report, yes.
01:10:48 19 Q. Taking a look at Plaintiff's Exhibit 1, page 79, I am
01:10:53 20 going to show you what was disclosed in the police report that
01:10:55 21 was provided to Mr. Fields. Delbert Edwards was interviewed
01:11:00 22 and he reported that he was shot at by members of the Goon
01:11:04 23 Squad and that he reported this to the police. Do you see
01:11:07 24 that?
01:11:07 25 A. I do see that.

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01:11:08 1 Q. And that they were arrested on April 27th, the day before
01:11:10 2 the murder at about 1530?
01:11:13 3 A. Correct.
01:11:13 4 Q. And further information that he spent the night, he didn't
01:11:20 5 get up the next day until 11:30 and then he heard the
01:11:24 6 shootings, correct?
01:11:24 7 A. That's correct.
01:11:25 8 Q. From his father who picked him up at his aunt's and then
01:11:28 9 his family verified Delbert had an alibi?
01:11:32 10 A. Yes.
01:11:32 11 Q. All right. But as that was disclosed to Mr. Fields?
01:11:36 12 A. That was disclosed.
01:11:37 13 Q. All right. I'd like to show you a note in the file and
01:11:42 14 ask you whether this was disclosed to Mr. Fields. This is
01:11:44 15 coming from Plaintiff's Exhibit 1 again, the page number is
01:11:48 16 69.
01:11:49 17 It looks like a handwritten note that's written on
01:11:57 18 the back of a scrap paper here, correct?
01:12:01 19 A. Okay. Yes.
01:12:03 20 Q. Here's the back. That's what I was showing you.
01:12:07 21 A. Okay.
01:12:07 22 Q. All right. It starts out by describing Lawrence and
01:12:13 23 Marshall as the Edwards brothers, right?
01:12:15 24 A. Yes.
01:12:15 25 Q. And then it says that they were -- that somebody heard

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01:12:19 1 them talking about killing Fuddy because of the shooting
01:12:23 2 night, right?
01:12:23 3 A. Yes.
01:12:23 4 Q. Then it says this person saw them about 9:00 o'clock in
01:12:32 5 the stairwell, Lawrence, one of Delbert's brothers, said he
01:12:36 6 was going to get the gun, and that they would put on masks and
01:12:40 7 Lawrence said he wouldn't live through the night and Marshall
01:12:43 8 said he won't be jumping on you anymore. That's what this
01:12:47 9 note says, correct?
01:12:48 10 A. That's correct.
01:12:48 11 Q. Is that materially different than what was in the police
01:12:51 12 report that was provided to Mr. Fields?
01:12:52 13 A. Yes, it's a lot of additional information and I would have
01:12:58 14 liked more information too. I would have wanted to know where
01:13:00 15 that information came, which I don't think is shown on that --
01:13:04 16 on those notes.
01:13:05 17 Q. Showing you a copy of page 115 from the same file, this is
01:13:14 18 the report of the shooting from April 27th, and it does
01:13:23 19 contain names of suspects, does it not?
01:13:26 20 A. Oh, yeah, this is the report of the shooting the prior
01:13:30 21 night, and that does -- that shows the victim, Delbert
01:13:35 22 Edwards, and it has the names of the alleged shooters.
01:13:38 23 Q. Paul Haily and Chundell Leaks. This was also in the
01:13:42 24 investigative file, correct?
01:13:42 25 A. Yes.

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01:13:43 1 Q. And it was not in the official file that was provided to
01:13:46 2 Mr. Fields, correct?
01:13:46 3 A. I don't believe so.
01:13:47 4 Q. Okay. Showing you page 117 c-h-U.N. d-e-l-l-leaks of the
01:13:55 5 continuing narrative, they learned that the victim had been
01:13:58 6 shot by two subjects name Paul Hailey and Chundell Leaks.
01:14:03 7 Victim said he had been having problems with these subjects
01:14:06 8 who are members of the black gangster Goon Squad and because
01:14:09 9 of other pending court cases against other members of the
01:14:13 10 gang, something I can't make out. Do you see that, sir?
01:14:15 11 A. Yes.
01:14:15 12 Q. That's an independent motive having nothing to do with the
01:14:18 13 case against Mr. Fields isn't that true, sir?
01:14:20 14 MR. KULWIN: Objection, leading.
01:14:21 15 THE COURT: Sustained.
01:14:22 16 BY MR. LOEVY:
01:14:23 17 Q. What would you have done with that information, sir?
01:14:25 18 A. I would have attempted to investigate it because it -- it
01:14:29 19 is another version of the events and if that version of the
01:14:32 20 events was the actual version, it would significantly under
01:14:37 21 cut the case against Mr. Fields.
01:14:38 22 Q. Showing you page 106 again, this is the GPR that was in
01:14:56 23 the file, the investigative file that's dated May 1st the
01:15:03 24 other anonymous call that alleged that Lawrence and Marshall
01:15:08 25 Edwards were the killers was checked out. Both were

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01:15:10 1 interviewed and stated they were home at the time of the
01:15:12 2 shooting in the company of their family members. Those photos
01:15:14 3 and descriptions are in the file. Do you see that?

01:15:16 4 A. I do.

01:15:16 5 Q. As a criminal defense attorney, were you required to
01:15:18 6 accept that the police checked it out and that they therefore
01:15:22 7 didn't have to tell you about it?

01:15:23 8 A. Not at all, no.

01:15:24 9 Q. Can you explain?

01:15:25 10 A. I would want to check it out. And it also doesn't seem
01:15:29 11 like there was much checking of the alibi.

01:15:32 12 MR. BURNS: Objection.

01:15:32 13 THE COURT: Overruled. He's explaining the answer.

01:15:36 14 BY MR. LOEVY:

01:15:42 15 Q. I am going to show you another document from the file,
01:15:44 16 this is Plaintiff's Exhibit 1, page 98. Another GPR created
01:15:49 17 by someone it looks like named Davis and it is dated 29th of
01:15:54 18 April, the day after the shooting or so. Can you read this
01:15:59 19 GPR?

01:16:00 20 A. Yeah, R. O., reporting officer, received a phone call from
01:16:04 21 a male black who stated that Rodell Banks was the person who
01:16:08 22 had shot the people on 39th Street. This caller refused to
01:16:12 23 give any, I think it's any further information about himself
01:16:16 24 and banks, call received at 1305 hours, then it's dated April
01:16:22 25 29th.

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01:16:22 1 Q. All right. Why is that valuable information in the
01:16:25 2 preparation of Mr. Fields' criminal defense?
01:16:26 3 A. Very much so, because, again, it provides an ultimate
01:16:32 4 version of what occurred.
01:16:34 5 Q. Who was Rodell Banks, do you remember from reviewing the
01:16:37 6 documents that he was an El Rukn?
01:16:38 7 A. I do remember that, and, yes, and also in this file is his
01:16:46 8 rap sheet.
01:16:47 9 Q. And his photographs, correct?
01:16:48 10 A. And his photo.
01:16:49 11 Q. All right. Do you know what the police did to investigate
01:16:52 12 from reviewing the files or any indication that they did to
01:16:56 13 investigate that an El Rukn named Rodell Banks was the
01:17:04 14 shooter?
01:17:04 15 A. Other than pulling his rap sheet which is in the file, I
01:17:07 16 didn't see anything else.
01:17:07 17 Q. Is that the kind of information that you as a criminal
01:17:09 18 defense attorney would have made use of?
01:17:11 19 A. Absolutely, and, you know, the rap sheet is interesting
01:17:15 20 too.
01:17:15 21 Q. All right. Because it's a long rap sheet, is it not?
01:17:17 22 A. Well, it has --
01:17:19 23 THE COURT: It's a yes or no question.
01:17:20 24 THE WITNESS: It wasn't long, but it was
01:17:22 25 significantly --

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01:17:24 1 MR. BURNS: Objection.

01:17:24 2 THE COURT: The answer is stricken.

01:17:26 3 BY MR. LOEVY:

01:17:26 4 Q. Let's take a look at another rap sheet for a man named

01:17:31 5 Earl Hawkins that was also in the investigative file. This is

01:17:35 6 page 125.

01:17:38 7 This is a Chicago Police Department rap sheet from

01:17:43 8 the era, correct?

01:17:44 9 A. Yes.

01:17:44 10 Q. I guess they have to type them as they went in pre

01:17:48 11 computers, correct?

01:17:49 12 A. Yes.

01:17:49 13 Q. It's hard to make out the Bates stamp on this page, but I

01:17:52 14 will show you the second page.

01:17:53 15 A. Yes.

01:17:54 16 Q. When was this inquiry made regarding Earl Hawkins?

01:17:57 17 A. Well, it's dated April 27th.

01:18:01 18 Q. Which is the date --

01:18:02 19 THE COURT: Of what year?

01:18:03 20 THE WITNESS: I'm sorry of 1984.

01:18:05 21 BY MR. LOEVY:

01:18:06 22 Q. Which is the day before the shooting, correct?

01:18:08 23 A. That's correct.

01:18:08 24 Q. And this is in the investigative file for a shooting that

01:18:12 25 happened the 28th?

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01:18:13 1 A. Correct.

01:18:14 2 Q. So it either was pulled the day before or somebody didn't
01:18:16 3 roll the same, one of the two things?

01:18:18 4 A. True.

01:18:18 5 Q. All right. Why is it -- let me show you another -- first
01:18:22 6 of all, is there any explanation anywhere in the official file
01:18:25 7 or in this investigative file for why Earl Hawkins, they were
01:18:28 8 pulling his rap sheet in April 84?

01:18:30 9 A. I don't believe so.

01:18:31 10 Q. All right. I'm going to show you another rap sheet of a
01:18:35 11 man named William Doyle also in the investigative file. Can
01:18:39 12 you see that, sir?

01:18:40 13 A. I do.

01:18:40 14 Q. This is page 127, same exhibit.

01:18:43 15 Also pulled on the same day, April 27th, do you see
01:18:46 16 that?

01:18:46 17 A. That's what it says, yeah.

01:18:48 18 Q. All right. Showing you page 121 from the same file, can
01:18:53 19 you tell the jury what William Doyle's nickname was?

01:18:56 20 A. His nickname was sundown.

01:18:59 21 Q. So sometime very close to the shooting, there's evidence
01:19:06 22 that the police suspected or had some reason to be looking at
01:19:10 23 Earl Hawkins and a man named sundown in their investigation,
01:19:14 24 correct?

01:19:14 25 A. Yes.

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01:19:15 1 Q. Now, it looks like from this note going back to page 127
01:19:21 2 that they quickly or that they were able to rule out Doyle as
01:19:27 3 a suspect, this note here, does it not?
01:19:29 4 A. Yeah, apparently he is in jail.
01:19:31 5 Q. He was in prison at the time?
01:19:33 6 A. Right.
01:19:33 7 Q. So that leaves Earl Hawkins and someone named sundown who
01:19:37 8 is not Mr. Doyle, correct?
01:19:39 9 A. Yes.
01:19:39 10 Q. Who was another man from your knowledge of the case whose
01:19:42 11 nick named sundown?
01:19:43 12 A. Anthony Sumner.
01:19:44 13 Q. Is there any indication anywhere in this file why the
01:19:47 14 police suspected Hawkins and sundown right after the murder?
01:19:51 15 A. I don't believe so.
01:19:53 16 Q. Have you ever seen any piece of paper, either in the
01:19:55 17 unofficial file or the official file that explains that?
01:19:57 18 A. No.
01:19:58 19 Q. Why is it significant that the police suspected Earl
01:20:03 20 Hawkins and sundown of this murder before May of 1985?
01:20:09 21 MR. BURNS: Objection, your Honor.
01:20:10 22 THE COURT: Basis?
01:20:11 23 MR. BURNS: Foundation.
01:20:12 24 THE COURT: Why don't you rephrase the question. Why
01:20:15 25 is it significant, how.

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01:20:17 1 BY MR. LOEVY:

01:20:18 2 Q. If you had been apprised that the police department was
01:20:20 3 actually considering Hawkins and sundown maybe as suspects
01:20:25 4 before May of '85, what would you have done as his criminal
01:20:28 5 defense attorney?

01:20:29 6 MR. BURNS: Objection, your Honor. Speculation,
01:20:31 7 argumentative.

01:20:32 8 THE COURT: Overruled.

01:20:33 9 THE WITNESS: I would have wanted to explore why
01:20:37 10 those people were suspects immediately after the murder when
01:20:43 11 the other evidence in the case indicated they didn't become
01:20:48 12 suspects until the evidence I had didn't indicate they became
01:20:51 13 suspects until over a year later in 1985.

01:20:53 14 BY MR. LOEVY:

01:20:54 15 Q. And in 1985, that's when Sumner got arrested, correct?

01:20:57 16 A. Yes.

01:20:57 17 Q. And he started talking to the authorities, right?

01:20:59 18 A. Yes.

01:21:00 19 Q. And the trial that was presented against Nate in 1986 was
01:21:04 20 the -- what was the state's theory of the case about how
01:21:07 21 Sumner came forward with this information?

01:21:09 22 A. The evidence as far as Mr. Fields was concerned was that
01:21:18 23 -- how was it.

01:21:20 24 THE COURT: You're asking how it was presented at the
01:21:22 25 '86 trial, right.

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01:21:23 1 MR. LOEVY: Right.

01:21:23 2 BY MR. LOEVY:

01:21:23 3 Q. Was it presented at the '86 trial as if Sumner had said,
01:21:27 4 guys, take out your pads, I'll tell you about a crime, or was
01:21:31 5 it presented as the police said to Sumner, we have -- we
01:21:34 6 suspect you in this very murder, what do you have to say about
01:21:37 7 that, do you understand the difference between the two I'm
01:21:40 8 asking you?

01:21:40 9 MR. KULWIN: I am going to object on the form of the
01:21:42 10 question.

01:21:42 11 THE COURT: Sustained.

01:21:43 12 BY MR. LOEVY:

01:21:43 13 Q. All right. Can you explain how it was presented that
01:21:46 14 Sumner came to be giving the authorities this information?

01:21:50 15 A. That -- I'm sorry.

01:21:54 16 THE COURT: You're fine.

01:21:55 17 THE WITNESS: I understand that Sumner would have
01:22:00 18 been arrested then said, look, I have all this information
01:22:03 19 about various crimes that have been committed.

01:22:06 20 BY MR. LOEVY:

01:22:07 21 Q. All right. If you had known that in fact the police
01:22:09 22 suspected sundown of the very crime that he gave the
01:22:11 23 information about, would that have changed cross-examination
01:22:15 24 of these things had they in 2009?

01:22:20 25 A. Yes, most certainly, because it had indicated that

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01:22:23 1 Sumner's statement that --

01:22:26 2 MR. BURNS: Objection.

01:22:28 3 THE WITNESS: Fields.

01:22:28 4 MR. LOEVY: Mr. Stainthorpe, there is an objection.

01:22:30 5 THE WITNESS: I'm sorry. I didn't hear it.

01:22:32 6 MR. BURNS: Your Honor, speculate.

01:22:33 7 THE COURT: I don't agree that it's speculative.

01:22:35 8 He's asking what he would have done if he had been given this

01:22:38 9 information. Go ahead, Mr. Loevy.

01:22:58 10 BY MR. LOEVY:

01:22:59 11 Q. I asked Mr. Stainthorpe to explain it.

01:23:01 12 A. Because it provided information that Sumner who was eye

01:23:05 13 tempting to deflect blame from himself when he in fact had

01:23:10 14 been a suspect in the murder and was attempting to deflect the

01:23:13 15 blame and put it on Mr. Fields.

01:23:15 16 Q. Was that very different than anything that had been given

01:23:17 17 to Mr. Fields in 1986?

01:23:19 18 A. Very much so, yes.

01:23:20 19 Q. May I have a moment, your Honor?

01:23:27 20 MR. LOEVY: We have no further questions, your Honor.

01:23:33 21 THE COURT: Go ahead, Mr. Burns.

01:23:36 22 - - -

01:23:36 23 JOHN STAINTHORPE, CROSS-EXAMINATION

01:23:36 24 BY MR. BURNS:

01:23:49 25 Q. Good afternoon, Mr. Stainthorpe.

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01:23:52 1 A. Good afternoon.

01:23:52 2 Q. Mr. Stainthorpe, you testified under questioning by

01:23:56 3 Mr. Loevy that some of the work that you do is actually civil

01:24:00 4 rights work where you file cases against the City of Chicago

01:24:03 5 and against the police department; is that correct?

01:24:05 6 A. Yes, that is.

01:24:05 7 Q. Now, let me take you back in time. You told us about the

01:24:12 8 post conviction petition. Do you remember that, that's why

01:24:15 9 you became involved, true?

01:24:16 10 A. Yes.

01:24:16 11 Q. What is a post conviction petition? Could you give us

01:24:21 12 some idea of what that's about just so the ladies and

01:24:24 13 gentlemen of the jury understand that a little better?

01:24:26 14 A. So a post conviction petition is a mechanism under

01:24:29 15 Illinois law where after someone who has been convicted in a

01:24:34 16 criminal case and who's direct appeals have been denied can

01:24:40 17 raise additional issues attempting to under cut either the

01:24:44 18 conviction or the sentence.

01:24:46 19 Q. So part of your job, if I understand correctly when you

01:24:52 20 were retained, was to go out, gather information about the

01:24:54 21 incident itself which would have been the shooting that

01:24:58 22 occurred on April 28th of 1984, correct?

01:25:01 23 A. Yes.

01:25:02 24 Q. And to try to interview witnesses, correct?

01:25:06 25 A. Yes.

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01:25:06 1 Q. Gather records, including attorney's files and information
01:25:12 2 that they had in their possession, correct?
01:25:13 3 A. Yes.
01:25:14 4 Q. And I'm talking about specifically the trial attorneys who
01:25:18 5 defended the allegations before Judge Thomas Maloney, correct?
01:25:22 6 A. Correct.
01:25:22 7 Q. Now, one of the attorneys was a Jack Smeeton, correct?
01:25:27 8 A. Yes.
01:25:27 9 Q. Jack Smeeton represented Nathson Fields?
01:25:31 10 A. Correct.
01:25:32 11 Q. Did you get his files?
01:25:33 12 A. No.
01:25:34 13 Q. William Swano represented Earl Hawkins; am I correct?
01:25:39 14 A. Yes.
01:25:39 15 Q. Did you get his file?
01:25:41 16 A. No.
01:25:41 17 Q. Counsel had asked you some questions about information
01:25:50 18 that was contained in the -- what you referred to the police
01:25:56 19 working file. Do you remember that?
01:25:57 20 A. I think he referred to it as investigative file.
01:26:03 21 Q. Well?
01:26:04 22 A. Didn't he?
01:26:05 23 Q. Let's call it the file that was produced later was not
01:26:08 24 produced in 1984?
01:26:10 25 A. Yes got it.

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01:26:11 1 Q. Whether we call it the investigative or working, but you
01:26:14 2 do understand what we're referring to?

01:26:16 3 A. I do.

01:26:16 4 Q. Good.

01:26:17 5 And one of the issues that he began to talk to you
01:26:21 6 about, he raised James Langston, something about Rick dog
01:26:26 7 Baldwin, do you remember that?

01:26:27 8 A. Yes.

01:26:28 9 Q. He also talked about a Gerald Green and a report from
01:26:31 10 Detective Minoque, M-i-n-o-q-u-e.

01:26:38 11 THE COURT: Thanks.

01:26:40 12 BY MR. BURNS:

01:26:40 13 Q. Do you remember that discussion?

01:26:41 14 A. Yes.

01:26:41 15 Q. And he also referenced this report, if I may, just to
01:26:45 16 refresh your recollection, he showed you this report moments
01:26:49 17 ago. Do you remember seeing that, sir, and I'll show you page
01:26:54 18 2?

01:26:55 19 A. Yes.

01:26:55 20 Q. And this deals with an incident that happened the night
01:27:01 21 before April 28th, 1984?

01:27:04 22 A. Yes.

01:27:05 23 Q. That date being April the 27th, 1984, correct?

01:27:08 24 A. Yes.

01:27:08 25 Q. And that was a shooting involving Delbert Edwards,

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01:27:12 1 correct?

01:27:13 2 A. Yes.

01:27:13 3 Q. So this -- that information if I understood your testimony

01:27:21 4 correctly, this might have involved some type of retaliation

01:27:26 5 by members of the Goon Squad to members of the El Rukns?

01:27:28 6 A. Yes.

01:27:29 7 Q. And you said that would be information that you'd want to

01:27:32 8 know about, correct?

01:27:33 9 A. Yes.

01:27:33 10 Q. And yet that information that you're talking about is

01:27:37 11 contained in the police reports, the very police reports that

01:27:41 12 you have told the ladies and gentlemen of the jury that you

01:27:43 13 had reviewed as part of your analysis and investigation in

01:27:50 14 order to prepare the post conviction petition isn't that also

01:27:55 15 correct?

01:27:56 16 A. Yes.

01:27:57 17 Q. And may I show --

01:28:00 18 A. Some of it is. I think there's additional information.

01:28:03 19 Q. Allow me to show me, if you would.

01:28:07 20 MR. BURNS: This is Exhibit 60, counsel.

01:28:10 21 THE COURT: 60.

01:28:12 22 MR. BURNS: Yes, sir.

01:28:12 23 BY MR. BURNS:

01:28:17 24 Q. And as you can see, this report that was prepared in 1984

01:28:22 25 following the murders of Smith and Hickman references this

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01:28:26 1 incident, doesn't it, an incident that happened the day
01:28:29 2 involving Goon Squad members, Delbert Edwards, do you see that
01:28:33 3 information?
01:28:33 4 A. Yes.
01:28:34 5 Q. And it talks about Cleveland Ball providing that
01:28:39 6 information?
01:28:41 7 A. Yes.
01:28:43 8 Q. And on the following page, if I may, there is information
01:28:48 9 at the very bottom regarding Delbert Edwards, correct?
01:28:52 10 A. Correct.
01:28:52 11 Q. All right. So let me ask you this to begin with you. Did
01:28:56 12 you interview Delbert Edwards?
01:28:58 13 A. No.
01:28:58 14 Q. All right. What about Cleveland Ball?
01:29:03 15 A. I don't know about Cleveland Ball, but I don't have a
01:29:08 16 recollection of that.
01:29:08 17 Q. So this would have been information that could have been
01:29:12 18 helpful you told the ladies and gentlemen of the jury, but you
01:29:15 19 did not speak to either of those gentleman, though this
01:29:18 20 information was known to you as part of the police reports
01:29:22 21 that you had?
01:29:22 22 A. Yeah --
01:29:24 23 Q. You have answered the question.
01:29:28 24 A. I am unsure about Cleveland Ball.
01:29:31 25 THE COURT: He said he is unsure about Cleveland

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01:29:34 1 Ball.

01:29:35 2 BY MR. BURNS:

01:29:36 3 Q. Let me ask you about James Langston. Do you remember that

01:29:39 4 name?

01:29:39 5 A. I do.

01:29:39 6 Q. Mr. Langston would have been an important witness; is that

01:29:42 7 correct?

01:29:42 8 A. Yeah.

01:29:44 9 Q. Now, you didn't even try to find him, did you?

01:29:46 10 A. I think I -- I think he was deceased by the time I got

01:29:50 11 involved.

01:29:50 12 Q. Really?

01:29:52 13 MR. BURNS: Judge, may I refresh his recollection?

01:29:54 14 THE COURT: Go ahead.

01:29:55 15 MR. BURNS: Thank you.

01:30:00 16 THE COURT: By the way, you don't need to ask

01:30:02 17 permission to do that. Just go ahead.

01:30:05 18 MR. BURNS: Thank you, Judge.

01:30:19 19 THE WITNESS: Okay.

01:30:24 20 BY MR. BURNS:

01:30:25 21 Q. So I am correct in my question that you don't think you

01:30:27 22 ever tried to find him actually?

01:30:30 23 A. Correct. I think I might have known he was dead.

01:30:33 24 Q. But you don't know?

01:30:34 25 A. I don't have a memory of everything from back then, that's

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01:30:40 1 true.

01:30:40 2 Q. In any event, that information could have been helpful to
01:30:44 3 you, correct?

01:30:45 4 A. What information?

01:30:47 5 Q. Information about James Langston?

01:30:49 6 A. Yeah.

01:30:51 7 Q. So let's talk a little bit more, I'd like to if I may for
01:30:58 8 a moment, about the petition that you filed before judge

01:31:01 9 Deborah Mary Dooling who is the criminal court judge?

01:31:04 10 A. It started off with one judge and moved to another.

01:31:06 11 Q. Eventually it ended up in front of Judge Dooling; am I
01:31:09 12 correct?

01:31:09 13 A. Yes.

01:31:10 14 Q. And before Judge Dooling, you filed a petition and then an
01:31:15 15 amended petition?

01:31:15 16 A. I think the initial petition was in front of another
01:31:20 17 judge, but I am not entirely sure.

01:31:21 18 Q. When did you file the first amended petition?

01:31:23 19 A. The amended petition?

01:31:25 20 Q. Yes.

01:31:26 21 A. I think that was 92.

01:31:27 22 Q. Would it be September the eighth, 1992?

01:31:30 23 A. That sounds like it could well be correct.

01:31:33 24 Q. And the basis of that amended petition was the bribe to
01:31:38 25 Judge Maloney, correct?

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01:31:41 1 A. That and there was another issue also.

01:31:43 2 Q. Ineffective assistance of counsel still remained?

01:31:47 3 A. No, there was an issue about Sumner.

01:31:48 4 Q. So you included that and Judge Dooling without an

01:31:55 5 evidentiary hearing ruled in favor of Mr. Fields, correct, on

01:32:01 6 the petition?

01:32:02 7 A. That timing is incorrect.

01:32:06 8 Q. Let me ask you. Let me slow down if you think it's

01:32:09 9 incorrect. We will make sure we clarify.

01:32:11 10 The petition you filed was in September of 1992,

01:32:15 11 you've told us, correct?

01:32:16 12 A. Yes.

01:32:16 13 Q. Judge Dooling did rule on the petition, correct?

01:32:20 14 A. Quite a while later I think.

01:32:23 15 Q. Well, we are going to get to it. The question is did she

01:32:26 16 rule on it?

01:32:27 17 A. Eventually.

01:32:27 18 Q. Eventually.

01:32:28 19 In fact, it was ruled upon, I believe, in September

01:32:32 20 of 1996?

01:32:38 21 A. That sounds right.

01:32:39 22 Q. And Judge Dooling granted the petition, correct?

01:32:44 23 A. Yes.

01:32:44 24 Q. And she granted the petition and vacated the conviction of

01:32:50 25 Mr. Fields?

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01:32:50 1 A. Correct.

01:32:50 2 Q. And gave him a new trial?

01:32:53 3 A. Correct.

01:32:53 4 Q. And she did that based on the information, solely on the

01:33:00 5 information of the bribe; isn't that correct?

01:33:02 6 A. Yes. Yes, it was based on that issue, that's true.

01:33:06 7 Q. She said the trial was corrupted, no one could have a fair

01:33:11 8 trial under those circumstances; am I correct?

01:33:15 9 A. Yes.

01:33:15 10 Q. And I think we talked -- she did that without even the

01:33:18 11 need for an evidentiary hearing?

01:33:21 12 A. Well, by that time Jim Maloney had been convicted.

01:33:25 13 Q. I'm sorry. My question is -- I'm probably not being as

01:33:30 14 clear as I should be. She did that without the need to

01:33:33 15 conduct an evidentiary hearing?

01:33:35 16 THE COURT: It's a yes or no question.

01:33:37 17 THE WITNESS: Yes, there was no evidentiary hearing.

01:33:41 18 MR. BURNS: Let me just have one moment, your Honor.

01:34:09 19 THE COURT: Okay.

01:34:10 20 (Brief pause.)

01:34:20 21 MR. BURNS: Thank you, Mr. Stainthorpe.

01:34:21 22 THE COURT: Mr. Kulwin.

01:34:23 23 MR. KULWIN: Yes, your Honor. Could I have just one

01:34:26 24 second .

01:34:28 25 - - -

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01:34:28 1 JOHN STAINTHORPE, CROSS-EXAMINATION

01:34:28 2 BY MR. KULWIN:

01:34:54 3 Q. Good afternoon, Mr. Stainthorpe.

01:34:55 4 A. Good afternoon.

01:34:56 5 Q. Mr. Stainthorpe, you testified that you visited Gerald

01:35:04 6 Morris in Milwaukee to interview him; is that correct?

01:35:06 7 A. That's correct.

01:35:07 8 Q. And did I hear you right that when you first started your

01:35:12 9 investigation, you asked the assistant state's attorneys where

01:35:16 10 Mr. Morris was?

01:35:17 11 A. I asked --

01:35:18 12 Q. Did you ask him that?

01:35:21 13 A. That was --

01:35:23 14 Q. Did you ask him?

01:35:24 15 A. Excuse me. That was part of a much broader request.

01:35:27 16 THE COURT: So that would be yes, you asked him that.

01:35:30 17 You might have asked him other things, but you asked him that.

01:35:33 18 THE WITNESS: I'm sorry, Judge. That's a yes.

01:35:35 19 THE COURT: That's a yes. Go ahead.

01:35:37 20 BY MR. KULWIN:

01:35:38 21 Q. And they would not tell you where he was, correct?

01:35:40 22 A. That's correct.

01:35:41 23 Q. And they told you why they wouldn't tell you where he was,

01:35:45 24 didn't they?

01:35:45 25 A. They represented --

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01:35:49 1 Q. Sir, the question is they told you why they wouldn't tell
01:35:53 2 you where he was; isn't that correct?
01:35:56 3 A. I don't think they were accurately telling me why.
01:35:58 4 MR. KULWIN: Judge, I move to strike.
01:35:59 5 THE WITNESS: I don't think they did tell me why.
01:36:00 6 THE COURT: Why don't you rephrase your question.
01:36:02 7 Did they give you a reason why?
01:36:05 8 BY MR. KULWIN:
01:36:06 9 Q. They gave you a reason why?
01:36:07 10 A. They did give me a reason.
01:36:08 11 Q. And the reason was that they didn't want you to know where
01:36:12 12 he was because he was afraid of the El Rukns; isn't that true?
01:36:16 13 A. That's what they said.
01:36:17 14 Q. Okay. Now, you went up to Milwaukee with another fellow;
01:36:17 15 isn't that right?
01:36:26 16 A. With Mr. Lohraff, correct.
01:36:28 17 Q. And he is a private investigator, correct?
01:36:30 18 A. No, incorrect.
01:36:31 19 Q. What is he?
01:36:31 20 A. He is an attorney.
01:36:32 21 Q. Okay. In any event, so the two of you drive up to
01:36:35 22 Milwaukee, correct?
01:36:36 23 A. Yes.
01:36:37 24 Q. And you find Mr. Morris, correct?
01:36:39 25 A. That's correct.

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01:36:40 1 Q. You don't give him any advance warning, correct?

01:36:43 2 A. Yes.

01:36:43 3 Q. Because you want to take him by surprise, correct?

01:36:45 4 A. I want to talk to him.

01:36:46 5 Q. Sir, the question was?

01:36:48 6 A. No, I don't want to take him by surprise. I want to talk

01:36:50 7 to him.

01:36:51 8 Q. Sir, didn't you say yesterday that one of the reasons you

01:36:54 9 don't contact people is that you want to surprise them so that

01:36:58 10 you can get them to talk to you?

01:37:00 11 A. No, I don't think I ever used the word surprised.

01:37:03 12 Q. Well, you want to -- you don't want to give them notice

01:37:06 13 because you are afraid if you give them notice, they might not

01:37:08 14 talk to you; isn't that right?

01:37:11 15 A. I know that if you just go up and try to talk to someone,

01:37:16 16 it's much more likely you are going to get them to talk to

01:37:19 17 you.

01:37:19 18 Q. My question is, sir, you don't give them any notice

01:37:23 19 because you are fearful if you call them up and say, hey, I'm

01:37:26 20 an attorney, I want to talk to you about your testimony in a

01:37:29 21 criminal trial, they'll say no?

01:37:31 22 MR. LOEVY: Judge, asked and answered.

01:37:32 23 THE COURT: I think it's been covered sufficiently at

01:37:35 24 this point. ^ .

01:37:37 25 BY MR. KULWIN:

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01:37:37 1 Q. And so you show up at Mr. Morris' home, right?

01:37:40 2 A. Correct.

01:37:40 3 Q. And you knock -- you and another fellow, right?

01:37:45 4 A. I didn't.

01:37:46 5 Q. You and another fellow, right?

01:37:48 6 A. Meaning Mr. Lohraff, right.

01:37:51 7 Q. You knock on the door?

01:37:53 8 A. We may have rung the doorbell.

01:37:54 9 Q. The doorbell, he opens the door, right?

01:37:57 10 A. I don't recall actually the exact sequence of events

01:38:02 11 there.

01:38:03 12 Q. Somebody opened the door, correct?

01:38:05 13 A. We were at his home and we came into contact with him.

01:38:10 14 Exactly how that happened, I am not sure.

01:38:12 15 Q. So you might have not gone into his home?

01:38:15 16 A. I know I didn't go into his home.

01:38:18 17 Q. So you ran into him out in front?

01:38:20 18 A. That might be. Either I rang the bell or, yeah.

01:38:23 19 Q. It's possible, I just want to be sure, I want to get clear

01:38:27 20 the context of where you spoke with him. It's possible, sir,

01:38:30 21 you didn't find him at home and you went looking for him

01:38:33 22 around the premises and you found him somewhere around the

01:38:35 23 premises?

01:38:35 24 A. No, I don't think so.

01:38:36 25 Q. So as you sit there today, you don't know how or where you

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01:38:39 1 found him?

01:38:40 2 MR. LOEVY: Objection, your Honor.

01:38:41 3 THE WITNESS: I do.

01:38:42 4 THE COURT: He's answered the question.

01:38:44 5 BY MR. KULWIN:

01:38:44 6 Q. You know where you found him?

01:38:45 7 A. I know that we met with him at his home, but not inside
01:38:49 8 his home, outside his home.

01:38:51 9 Q. Where outside his home did you find him?

01:38:53 10 A. I think the front porch.

01:38:55 11 MR. LOEVY: Object to relevance, your Honor.

01:38:57 12 THE COURT: Overruled.

01:38:58 13 BY MR. KULWIN:

01:38:59 14 Q. So you go up to his house and he is sitting on his front
01:39:02 15 porch, right?

01:39:03 16 A. No, I don't think that's true.

01:39:04 17 Q. Why don't you tell me what was he doing on the front
01:39:07 18 porch, sir?

01:39:07 19 A. Well, he wasn't -- I don't have any recollection of him
01:39:11 20 sitting on the front porch. I came into contact with him

01:39:15 21 outside his house, not inside his house, and at that point, I
01:39:20 22 talked to him.

01:39:22 23 Q. And since he was outside of his house, you recognized him
01:39:28 24 somehow, correct?

01:39:30 25 A. Well, I asked him, are you Gerald Morris.

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01:39:32 1 Q. Okay. And he said, yes, I am?

01:39:35 2 A. He did.

01:39:36 3 Q. And then you said, oh, nice to meet you, I'm John

01:39:39 4 Stainthorpe, I represent Nathson Fields?

01:39:41 5 MR. LOEVY: Objection, relevance, your Honor.

01:39:43 6 THE COURT: Overruled.

01:39:44 7 THE WITNESS: Something along those lines. I
01:39:46 8 probably gave him my card. I wanted him to know who I was.

01:39:49 9 MR. KULWIN: Judge, I move to strike anything other
01:39:51 10 than yes or no.

01:39:55 11 THE COURT: Overruled.

01:39:55 12 BY MR. KULWIN:

01:39:56 13 Q. All right. And then after you introduced yourself and
01:39:59 14 give him your card, you introduce your partner, Mr. Lohraff;
01:39:59 15 is that right?

01:40:03 16 A. He probably introduced himself.

01:40:04 17 Q. Okay. But the key, though, is, sir, you told him that you
01:40:08 18 there to represent Nathson Fields, correct?

01:40:11 19 A. Yes, absolutely.

01:40:12 20 Q. And you wanted to talk to him about his testimony,
01:40:16 21 correct?

01:40:16 22 A. That's correct.

01:40:17 23 Q. The testimony that helped put Nathson Fields behind bars,
01:40:22 24 correct?

01:40:22 25 A. Yes.

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01:40:22 1 Q. And at the time, Nathson Fields was still in the El Rukns,
01:40:29 2 wasn't he?

01:40:30 3 A. I don't think he was, actually.

01:40:33 4 Q. Well, would you --

01:40:35 5 A. You know what, I don't even know.

01:40:38 6 Q. Okay. Well, it's important.

01:40:39 7 Are you aware that Mr. Fields has testified that --

01:40:42 8 THE COURT: No, I am going to stop you right there.

01:40:44 9 That's for argument.

01:40:45 10 MR. KULWIN: All right, Judge.

01:40:46 11 BY MR. KULWIN:

01:40:47 12 Q. In any event, and as soon as Mr. Morris hears that you're
01:40:54 13 with Mr. Fields, he says, sure, I'll talk to you, what do you
01:40:57 14 want to know?

01:40:58 15 MR. LOEVY: We move to strike. There is no evidence
01:41:00 16 that Mr. Fields was still in the El Rukns.

01:41:02 17 THE COURT: That's not the pending question.

01:41:04 18 THE WITNESS: Can you repeat it? I have forgotten
01:41:06 19 what you asked.

01:41:07 20 BY MR. KULWIN:

01:41:08 21 Q. Let me put it a different way.

01:41:12 22 You have approached Mr. Morris out of the blue and
01:41:16 23 after you tell him, I'm representing Nathson Fields and I want
01:41:21 24 to talk to you, he says, no problem?

01:41:23 25 A. Yes.

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01:41:23 1 Q. He doesn't say -- well, we won't get into what he doesn't
01:41:30 2 say.

01:41:30 3 All right. Then he is extremely cooperative, right?

01:41:32 4 A. Very.

01:41:33 5 Q. Yeah, you want to ask him a question, sure, what do you
01:41:36 6 want to know, he says that, right, something like that?

01:41:38 7 A. Yeah, I asked him questions and he answered them.

01:41:40 8 Q. Yeah, and as you're sitting there, you've got your buddy
01:41:43 9 taking notes the whole time, right?

01:41:45 10 A. No, no one was taking notes.

01:41:46 11 Q. Really?

01:41:50 12 MR. KULWIN: Can I have one second?

01:41:51 13 THE COURT: Can I see the lawyers at sidebar, please.

01:42:02 14 (The following proceedings were had at sidebar outside the
01:42:04 15 hearing of the jury:)

01:42:04 16 THE COURT: So I am going to say this now so that I
01:42:06 17 don't have to say it later in front of the jury.

01:42:07 18 THE WITNESS: The little common dear after the
01:42:09 19 answers has got to stop, the really and all has got to stop.
01:42:13 20 I am going to give you a little bit of unsolicited advice as
01:42:16 21 somebody who has talked to a couple, 3,000 jurors, the
01:42:20 22 demeanor, I'm just going to tell you, I am saying this to help
01:42:24 23 you out is counter productive. It is. I'm just telling you.

01:42:32 24 (The following proceedings were had in open court in the
01:42:54 25 presence and hearing of the jury:)

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01:42:54 1 MR. KULWIN: I lost my train of thought there for a
01:42:58 2 second.

01:42:58 3 BY MR. KULWIN:

01:42:59 4 Q. Mr. Stainthorpe?

01:42:59 5 THE COURT: The last question I think was whether
01:43:01 6 Mr. Morris was cooperative.

01:43:03 7 MR. KULWIN: Actually, I think I was a little past
01:43:05 8 that. Was somebody taking your notes.

01:43:06 9 THE COURT: You are absolutely right. That's true.

01:43:08 10 BY MR. KULWIN:

01:43:10 11 Q. So and I forgot what your answer was. Nobody was taking
01:43:15 12 notes?

01:43:15 13 A. No, what I said is while we were talking to Mr. Morris, no
01:43:19 14 one was taking notes.

01:43:22 15 Q. But someone ultimately took notes?

01:43:23 16 A. After the conversation ended, yes, we did -- we went back
01:43:30 17 to the car and we did take notes.

01:43:31 18 Q. So there was no contemporaneous?

01:43:35 19 MR. LOEVY: Objection, asked and answered, your
01:43:36 20 Honor.

01:43:36 21 THE COURT: I haven't heard the whole question yet.

01:43:39 22 BY MR. KULWIN:

01:43:40 23 Q. There was no contemporaneous taking of the notes while he
01:43:43 24 was actually speaking?

01:43:44 25 A. That's correct.

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01:43:45 1 MR. LOEVY: Objection. Asked and answered.

01:43:46 2 THE COURT: The objection is overruled.

01:43:47 3 THE WITNESS: Correct.

01:43:48 4 BY MR. KULWIN:

01:43:50 5 Q. And then you wrote up an affidavit of that interview,
01:44:00 6 correct?

01:44:00 7 A. Yes.

01:44:01 8 Q. And if I understand it correctly, you wrote it up not
01:44:15 9 based on the notes that you folks took but based on your
01:44:18 10 memory, correct?

01:44:19 11 A. It was based both on the notes and my memory, yes.

01:44:21 12 Q. Do you recall giving testimony in this case in a prior
01:44:33 13 hearing on April 18th, 2014?

01:44:36 14 A. Okay.

01:44:38 15 Q. And you were under oath at the time?

01:44:40 16 A. Sure.

01:44:40 17 Q. Were you asked this question.

01:44:44 18 MR. KULWIN: I'm sorry, page 1897.

01:44:47 19 BY MR. KULWIN:

01:44:48 20 Q. Those are notes and based upon those notes then you
01:44:50 21 prepared the affidavit; am I correct??

01:44:51 22 "ANSWER: No. I actually -- the affidavit was based on
01:44:54 23 my recollection of the interview with Mr. Morris."

01:44:58 24 I'm sorry, I stand corrected. The end of the notes.

01:45:02 25 I'm sorry. I withdraw the objection. I was wrong.

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01:45:09 1 BY MR. KULWIN:

01:45:10 2 Q. Now, did I understand you correctly that you had no
01:45:21 3 familiarity with the El Rukns or you had no contact with them
01:45:24 4 before you interviewed Mr. Morris?

01:45:26 5 A. I had no contact with them, with the El Rukns, I never had
01:45:30 6 any contact with the El Rukns.

01:45:31 7 Q. My question was did I understand you right you had no
01:45:35 8 familiarity with the El Rukns or no contact with them?

01:45:38 9 A. I generally knew about the El Rukns.

01:45:39 10 Q. All right. During your interview, you never asked
01:45:47 11 Mr. Morris why he was in Milwaukee, correct?

01:45:49 12 A. I don't recall ever asking him that.

01:45:54 13 Q. Or why he suddenly left Chicago where he was born and
01:45:59 14 raised and moved to Milwaukee, you never asked him that
01:46:02 15 either?

01:46:02 16 MR. LOEVY: Objection, your Honor, relevance.

01:46:04 17 THE WITNESS: I had no --

01:46:05 18 THE COURT: The answer can stand. Go ahead. Finish
01:46:08 19 the answer.

01:46:08 20 THE WITNESS: I had no information that he had left
01:46:11 21 suddenly. I didn't know anything about the circumstances
01:46:14 22 under which he had left Chicago.

01:46:16 23 BY MR. KULWIN:

01:46:16 24 Q. When you were interviewing him, you knew he had been in
01:46:18 25 Chicago, correct?

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01:46:19 1 A. Clearly.

01:46:19 2 Q. And so just to be clear, you didn't ask him --

01:46:24 3 MR. LOEVY: Objection, your Honor. Asked and
01:46:25 4 answered.

01:46:25 5 THE COURT: Sustained. It's been covered.

01:46:26 6 BY MR. KULWIN:

01:46:27 7 Q. Now, when you were talking to him, you had the opportunity
01:46:42 8 to ask him anything you wanted that you thought was germane to
01:46:46 9 your investigation, correct?

01:46:48 10 A. Yeah, I think so.

01:46:50 11 Q. Okay. Now, if we can look at -- I'm sorry.

01:47:09 12 MR. KULWIN: Can I have one second, Judge?

01:47:11 13 THE COURT: Sure.

01:47:15 14 (Brief pause.)

01:47:17 15 MR. KULWIN: May I put this up? It's Plaintiff's
01:47:20 16 Exhibit 42.

01:47:22 17 THE COURT: I assume there is no objection.

01:47:23 18 MR. LOEVY: No objection.

01:47:24 19 THE COURT: That's fine.

01:47:25 20 BY MR. KULWIN:

01:47:31 21 Q. Now, this is the affidavit that you wrote a couple months
01:47:35 22 after the interview of Gerald Morris that you took in 1999,
01:47:39 23 correct?

01:47:39 24 A. Yes, it is.

01:47:40 25 Q. Now, there's nothing in the affidavit, is there, that

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01:47:48 1 Detective O'Callaghan coerced Mr. Morris into saying anything
01:47:53 2 is that true?
01:47:54 3 A. There's nothing -- right, there's nothing in there about
01:48:02 4 O'Callaghan coercing someone to say something, that's true.
01:48:05 5 Q. In fact, there's nothing in there that says that Detective
01:48:13 6 O'Callaghan even suggested to him who to pick isn't that
01:48:18 7 right?
01:48:18 8 A. I disagree with that.
01:48:20 9 Q. Well, is there a statement anywhere that says Detective
01:48:26 10 O'Callaghan influenced me on who to pick out of the pictures?
01:48:28 11 A. I viewed his comment as saying by intuition as indicating
01:48:34 12 that O'Callaghan had indicated to him who to pick out, that's
01:48:39 13 what I thought he meant.
01:48:41 14 MR. KULWIN: I move to strike that, Judge.
01:48:42 15 THE COURT: Restate the question again, Mr. Kulwin.
01:48:45 16 MR. KULWIN: Sure.
01:48:46 17 THE COURT: I just struck the answer.
01:48:47 18 MR. KULWIN: You are asking her?
01:48:49 19 BY MR. KULWIN:
01:48:50 20 Q. You didn't write in the affidavit anywhere that Gerald
01:48:52 21 Morris told you Detective O'Callaghan told me who to pick out
01:48:56 22 of the picture?
01:48:57 23 THE COURT: The question is whether the words appear
01:48:59 24 in the substance in the affidavit.
01:49:00 25 THE WITNESS: That is correct. Those words do not

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01:49:02 1 appear.

01:49:05 2 BY MR. KULWIN:

01:49:06 3 Q. Okay. Now, at the time that you were doing your
01:49:10 4 investigation, and I don't want to be repetitive in any way,
01:49:16 5 you were gathering information for this -- let me take that
01:49:20 6 back.

01:49:20 7 One of the things that you were doing was to gather
01:49:23 8 information to support the post conviction ruling?

01:49:26 9 MR. LOEVY: Objection, asked and answered.

01:49:27 10 THE WITNESS: This is beyond that. Approximate. C
01:49:30 11 is --

01:49:31 12 THE COURT: I'll let the answer stand. Go ahead.

01:49:33 13 BY MR. KULWIN:

01:49:33 14 Q. This is for some other investigatory purpose?

01:49:38 15 A. This is for the retrial.

01:49:39 16 Q. So at that time you were thinking you were going to be
01:49:42 17 representing him at the retrial?

01:49:44 18 A. Yes.

01:49:44 19 Q. Okay. And while you were talking to him, you could have
01:49:52 20 asked him anything you wanted about the lineups isn't that
01:49:59 21 right that he witnessed?

01:49:59 22 A. Yeah, I think so.

01:50:01 23 Q. And there's nothing in this affidavit that says that you
01:50:09 24 -- that he told you anything about the line ups?

01:50:11 25 MR. LOEVY: Objection, improper impeachment, your

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01:50:13 1 Honor.

01:50:14 2 THE COURT: Sustained. Well, no, I don't think that
01:50:19 3 that's what it's being offered for. I changed my mind.
01:50:22 4 Overruling the objection.

01:50:23 5 THE WITNESS: That's correct. There is nothing about
01:50:24 6 the in-person line ups.

01:50:26 7 BY MR. KULWIN:

01:50:27 8 Q. And you talked to him about the line ups, didn't you?

01:50:29 9 A. I have no recollection of that. It's possible I did, but
01:50:33 10 I have no recollection.

01:50:34 11 Q. But certainly had he told you at that time something
01:50:39 12 extremely bizarre or unusual happening in the lineup, you
01:50:42 13 would have written that down, correct?

01:50:44 14 MR. LOEVY: Objection, your Honor. That's improper
01:50:46 15 impeachment.

01:50:46 16 THE COURT: Overruled.

01:50:47 17 THE WITNESS: Yes, I think I would.

01:50:48 18 BY MR. KULWIN:

01:50:49 19 Q. And you would have included it in your affidavit?

01:50:54 20 A. I think I would have.

01:50:55 21 Q. Now, when you were talking to Mr. Morris, he told you that
01:51:09 22 before the trial he met with the state's attorneys several
01:51:13 23 times; isn't that true?

01:51:19 24 A. I don't recall that.

01:51:20 25 Q. That's fair. That's fair.

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01:51:23 1 MR. KULWIN: I'm going to refresh his recollection,
01:51:25 2 Judge.

01:51:25 3 THE COURT: Can I ask you a question? Somewhere in
01:51:27 4 here we have to take a break. When you are going to do a
01:51:30 5 change of subject, let me know.

01:51:32 6 MR. KULWIN: It's getting close to that, Judge.

01:51:35 7 BY MR. KULWIN:

01:51:36 8 Q. Mr. Stainthorpe, let me show you what I believe are the
01:51:38 9 notes of Mr. Lohraff?

01:51:40 10 A. Laurel.

01:51:40 11 Q. I think it's Defense Exhibit 380, if not it's J. MSN Y
01:51:47 12 009060. Could you take a look at that? I have highlighted
01:51:50 13 the bottom and I think it goes over to the next page.

01:51:55 14 A. Okay. Yeah, those notes would indicate we did ask him
01:52:00 15 that.

01:52:00 16 MR. LOEVY: Objection, your Honor. That wasn't the
01:52:02 17 question. Those aren't his notes.

01:52:06 18 THE COURT: There wasn't a question pending, so
01:52:08 19 whatever he said is stricken. Now you can ask a question.
01:52:10 20 You just asked him to take a look at it.

01:52:12 21 MR. KULWIN: I know.

01:52:14 22 BY MR. KULWIN:

01:52:16 23 Q. I want to be sure I'm right here.

01:52:18 24 So you did talk to him during the interview about him
01:52:21 25 meeting with the state's attorneys before the trial, correct?

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01:52:25 1 A. It appears so.

01:52:26 2 Q. Okay. And you're familiar with the term pre trying a
01:52:30 3 witness, aren't you, Mr. Stainthorpe?

01:52:32 4 A. Pre trying?

01:52:32 5 Q. Yes; you have heard that before, haven't you?

01:52:36 6 A. No, I haven't, actually.

01:52:37 7 Q. Okay. Have you tried cases?

01:52:39 8 A. Yes.

01:52:40 9 Q. Okay. What -- when you try cases, do you interview your
01:52:44 10 potential witness?

01:52:45 11 THE COURT: Why don't you use the word preparing.

01:52:48 12 THE WITNESS: I absolutely prepare witnesses.

01:52:50 13 BY MR. KULWIN:

01:52:50 14 Q. You prepare?

01:52:51 15 A. Yes.

01:52:51 16 Q. Back in the day we called it that.

01:52:54 17 Okay. Anyway, so you prepare the witnesses, right?

01:52:59 18 A. Yes.

01:52:59 19 Q. And there's nothing wrong with that, right?

01:53:01 20 A. It's your duty.

01:53:02 21 Q. Right.

01:53:03 22 And so when Mr. Morris told you that he went over his
01:53:08 23 testimony several times with the state's attorney about what
01:53:12 24 he saw and where he stood and all those things, you viewed
01:53:15 25 that as they were preparing him for trial, correct?

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01:53:17 1 A. They clearly were preparing him for trial, yes.

01:53:20 2 Q. Not that they were trying to influence or intimidate or

01:53:23 3 coerce him or tell him what to say, correct?

01:53:26 4 A. Yeah, I would agree.

01:53:30 5 Q. All right. Because if you had thought that's what it was,

01:53:34 6 it would have been in the affidavit, true?

01:53:36 7 A. If he said that that's what was happening, yes.

01:53:41 8 THE COURT: Are we at the subject change?

01:53:43 9 MR. KULWIN: Yes.

01:53:43 10 THE COURT: We are going to take a 10-minute break.

01:53:45 11 The jurors can come with me.

01:55:11 12 (Short break.)

02:04:44 13 (The jury enters the courtroom.)

02:04:45 14 THE COURT: All right. Everyone can have a seat.

02:04:50 15 Mr. Kulwin, you can go ahead.

02:04:52 16 MR. KULWIN: Thanks, Judge.

02:05:03 17 BY MR. KULWIN:

02:05:14 18 Q. Mr. Stainthorpe, going back to the affidavit?

02:05:20 19 MR. KULWIN: Judge, can you turn on the computer?

02:05:23 20 THE COURT: I did. Oh, I put defense 2, my mistake,

02:05:27 21 I have the wrong table.

02:05:30 22 MR. KULWIN: I think it's Plaintiff's Exhibit 42.

02:05:37 23 THE COURT: There you go.

02:05:39 24 BY MR. KULWIN:

02:05:40 25 Q. Now, Mr. Stainthorpe, in paragraph 7, you say that -- you

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02:05:52 1 recorder a long time after the shooting, Detective O'Callaghan
02:05:57 2 showed me four photographs to see if I could identify anyone.
02:06:01 3 Do you see that?
02:06:01 4 A. Yes.
02:06:01 5 Q. In the notes of the -- when you met with him and
02:06:05 6 Mr. Lohraff took notes, he didn't make any notation of that;
02:06:10 7 is that correct?
02:06:10 8 A. I believe that's correct accurate, yes.
02:06:11 9 Q. And in paragraph 9, you put down after I picked out a
02:06:15 10 photograph, O'Callaghan said that's him, right?
02:06:18 11 A. Right.
02:06:19 12 Q. That's not in the notes either?
02:06:20 13 A. I think that's correct also.
02:06:22 14 Q. All right. Now, yesterday, you spent some time talking to
02:06:31 15 counsel about Mr. Beseth's map, do you remember that?
02:06:39 16 A. No.
02:06:39 17 Q. Or you used -- you used some calculations that Mr. Beseth
02:06:44 18 had done on the map; isn't that right?
02:06:46 19 A. I was familiar with the -- yes, the distance that he
02:06:51 20 apparently had measured back in 1984 or something.
02:06:55 21 Q. I think it was 1985, but close enough?
02:06:58 22 A. Okay.
02:06:58 23 Q. It's a long time ago, a long, long time ago?
02:07:02 24 A. Correct.
02:07:02 25 Q. And you used the specific measurement of 155 feet, right?

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02:07:06 1 A. Yeah, that's what was his testimony.

02:07:08 2 Q. Okay. Now, did you ever during your investigation review
02:07:15 3 Mr. Buckles' testimony?

02:07:17 4 A. I'm sure I did.

02:07:19 5 Q. And do you recall that Mr. Buckles said something a little
02:07:24 6 bit different about where Randy was standing?

02:07:26 7 A. I don't recall those details, no.

02:07:30 8 Q. Okay. But you certainly reviewed Randy Langston's
02:07:33 9 testimony; isn't that right?

02:07:35 10 A. Yes.

02:07:35 11 Q. ?

02:08:06 12 MR. KULWIN: Judge, can you ask the jurors if it's
02:08:08 13 big enough for them?

02:08:10 14 THE COURT: The jurors aren't seeing it because when
02:08:13 15 I turn it off -- it's big enough.

02:08:15 16 BY MR. KULWIN:

02:08:17 17 Q. Now, this is testimony from --

02:08:21 18 THE COURT: Do you have a page number?

02:08:23 19 MR. KULWIN: Yes, it's page 162.

02:08:25 20 THE COURT: Thanks.

02:08:26 21 BY MR. KULWIN:

02:08:34 22 Q. And there's this question, and Fuddy and Talman were right
02:08:39 23 at the edge of the breezeway? Yes. And I just want to skip
02:08:43 24 down now to the bottom.

02:08:48 25 Now, isn't it true that from where you were standing,

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02:08:51 1 meaning Randy Langston, to the edge of that breezeway, was a
02:09:01 2 good hundred feet or more?
02:09:03 3 A. Okay. Now I see it, yes.
02:09:05 4 Q. And Mr. Langston says, no. Well, you tell me how far it
02:09:11 5 was. And Mr. Langston says it was about from here where I'm
02:09:14 6 standing about to the end of this courtroom. And then the
02:09:18 7 next question is from there to the end of the courtroom?
02:09:21 8 "ANSWER: Yes.
02:09:21 9 "QUESTION: Let me walk to the back of the courtroom
02:09:24 10 and tell me is this about the view you had, about this far
02:09:27 11 away?
02:09:28 12 "ANSWER: No, it was a little bit farther.
02:09:31 13 "QUESTION: A little farther. Tell me when.
02:09:35 14 "ANSWER: About to the end of that -- back to the wall,
02:09:38 15 to the end of the wall.
02:09:40 16 "QUESTION: About this far?
02:09:41 17 "ANSWER: Yes.
02:09:43 18 And then the court says, a distance of '80 feet
02:09:47 19 A. That's Judge Maloney.
02:09:50 20 Q. I don't know. I am just telling you what that is.
02:09:52 21 A. Judge Maloney.
02:09:55 22 Q. Okay. Do you see that testimony?
02:09:57 23 A. I do.
02:09:57 24 Q. Are you saying Judge Maloney was saying something
02:10:00 25 different than what it was?

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02:10:01 1 A. He may have been.

02:10:02 2 Q. Do you know?

02:10:03 3 A. I don't know. I know he was a fairly corrupt judge.

02:10:07 4 Q. I guess my question on that one was he was the fact

02:10:11 5 finder?

02:10:11 6 A. He was.

02:10:12 7 Q. He wasn't trying to influence a jury by saying 80 feet?

02:10:16 8 A. True.

02:10:16 9 Q. And you have been to 26th Street, right?

02:10:20 10 A. Yes.

02:10:20 11 Q. And you know the size of the smaller courtrooms?

02:10:22 12 A. It was not a smaller courtroom.

02:10:24 13 Q. I do know that?

02:10:25 14 A. Because I know Judge Maloney's courtroom back then.

02:10:28 15 Q. And you know the size of the other courtrooms?

02:10:30 16 A. Yes.

02:10:30 17 Q. And are they bigger than this one?

02:10:33 18 A. Yes.

02:10:33 19 Q. You think the courtrooms at 26th and California are bigger

02:10:37 20 than this courtroom, seriously?

02:10:39 21 A. Yes.

02:10:39 22 Q. In any event, he said 80 feet, right?

02:10:50 23 A. Judge Maloney did, yes.

02:10:53 24 Q. Now, Beseth, who got the interview who used the 155-foot

02:11:08 25 distance, he got that when he was out interviewing

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02:11:11 1 Mr. Langston with bill Swano; is that correct?

02:11:16 2 A. I don't know that.

02:11:17 3 Q. Isn't it true that Mr. Swano and Mr. Beseth went out to
02:11:23 4 interview Mr. Langston at his home in July of '85?

02:11:28 5 A. That may well be true, but I don't know that.

02:11:30 6 Q. Well, I thought you reviewed the transcripts of the trial,
02:11:35 7 didn't that come out?

02:11:36 8 A. A long time ago.

02:11:37 9 Q. Did that come out, do you recall that?

02:11:39 10 MR. LOEVY: Asked and answered, your Honor.

02:11:41 11 THE COURT: Sustained.

02:11:41 12 BY MR. KULWIN:

02:11:43 13 Q. And at that point in time, Mr. Swano and Mr. Beseth
02:11:49 14 approached Mr. Langston and told them they were a state's
02:11:54 15 attorney and a police detective; isn't that right?

02:11:56 16 A. I don't know that.

02:11:56 17 Q. So you didn't see that in the transcript either when you
02:12:00 18 were reviewing it?

02:12:01 19 A. I may well have seen that in the transcript.

02:12:08 20 MR. LOEVY: Objection, your Honor. Actually, that's
02:12:09 21 not in the transcript.

02:12:10 22 THE COURT: You don't get to testify, so you can put
02:12:12 23 up the transcript at some point. So the comment is stricken.
02:12:15 24 The objection is overruled.

02:12:16 25 MR. KULWIN: If I am in error, I apologize.

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02:12:20 1 BY MR. KULWIN:

02:12:22 2 Q. Now, you learned -- did you learn that after Mr. Morris
02:12:38 3 signed your affidavit, he signed another affidavit? Are you
02:12:44 4 aware of that?

02:12:44 5 A. That does sound right, yes.

02:12:51 6 Q. He signed one a year after -- he signed one -- your
02:12:56 7 affidavit was signed before you ever filed a lawsuit, right?

02:13:00 8 A. Before Mr. Fields.

02:13:01 9 Q. This lawsuit?

02:13:01 10 A. Oh, sure, this was -- the criminal case was still pending.

02:13:05 11 Q. Right.

02:13:05 12 And your affidavit is --

02:13:26 13 THE COURT: Back to the computer.

02:13:28 14 MR. KULWIN: I will go faster.

02:13:31 15 THE COURT: You don't have to keep pulling it down.

02:13:34 16 It just makes the light go on.

02:13:36 17 BY MR. KULWIN:

02:13:37 18 Q. Your affidavit is nine sentences, true?

02:13:42 19 A. Well, hold on. Yes.

02:13:46 20 Q. Have you seen the affidavit that Mr. Morris signed in
02:14:05 21 2011, do you recall seeing that?

02:14:06 22 A. I probably have not seen that.

02:14:11 23 Q. Can I show it to you to see if it refreshes your
02:14:14 24 recollection?

02:14:15 25 A. Sure.

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02:14:16 1 Q. Have you seen these?

02:14:19 2 A. Okay. I can tell you this does not look familiar.

02:14:34 3 Q. Okay. I just want do clarify something on this affidavit

02:15:17 4 that you got from Randy Langston -- that was gotten from Randy

02:15:22 5 Langston in August of 1999. All right?

02:15:25 6 A. Okay.

02:15:26 7 Q. That was obtained by Mr. Low; is that correct?

02:15:32 8 A. Yes.

02:15:32 9 Q. And that was obtained while Mr. Langston was in prison?

02:15:35 10 A. I believe so.

02:15:36 11 Q. And we heard testimony from -- in this case that there's a

02:15:41 12 lot of gang culture in these prisons, you are aware of that,

02:15:45 13 right?

02:15:45 14 A. Well, I haven't heard that testimony in this case, but I

02:15:49 15 will absolutely agree with you.

02:15:50 16 MR. LOEVY: Object to relevance, your Honor.

02:15:51 17 THE COURT: Overruled.

02:15:54 18 BY MR. KULWIN:

02:15:56 19 Q. And so while Mr. Langston is being visited by Mr. Fields'

02:16:01 20 attorney in prison, he's living in an atmosphere that infested

02:16:09 21 with gangs, right?

02:16:10 22 MR. LOEVY: Objection.

02:16:10 23 THE COURT: Sustained. The objection is sustained.

02:16:12 24 BY MR. KULWIN:

02:16:13 25 Q. Now, after he gives this affidavit, though, and -- pardon

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02:16:21 1 me.

02:16:21 2 This affidavit, the last time Randy Langston had
02:16:26 3 opined or testified about what he saw had been at the death
02:16:31 4 sentence hearing before this affidavit, right?

02:16:33 5 A. Okay. So the affidavit is 99. I don't think that's
02:16:37 6 accurate.

02:16:37 7 Q. So there was testimony between the death sentence hearing
02:16:41 8 and the affidavit?

02:16:41 9 A. In a different proceeding.

02:16:44 10 Q. Okay?

02:16:47 11 MR. KULWIN: Can I have a moment, Judge?

02:16:48 12 THE COURT: Sure.

02:17:19 13 BY MR. KULWIN:

02:17:19 14 Q. I want to be clear about something. Maybe the time frame.
02:17:23 15 Maybe I have the time frame wrong.

02:17:25 16 You know there was a trial in '86?

02:17:27 17 A. Yes.

02:17:28 18 Q. And then there was a death sentence hearing, correct?

02:17:30 19 A. Yes.

02:17:30 20 Q. And then there was a new trial in 2009, correct?

02:17:33 21 A. In this case, yeah.

02:17:36 22 Q. In Mr. Fields' case, right?

02:17:38 23 A. Right, right.

02:17:39 24 Q. And you had -- you filed post conviction proceedings, but
02:17:42 25 there wasn't an actual evidentiary hearing, correct?

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02:17:44 1 A. That's correct.

02:17:44 2 Q. So there was no testimony that Mr. Langston gave under
02:17:52 3 oath in a hearing between the time he testified at the death
02:17:55 4 sentence and the time you got your affidavit from him in 1999?

02:17:59 5 A. I don't think that's accurate.

02:18:00 6 Q. You are aware?

02:18:06 7 THE COURT: He has now said it twice. Are you going
02:18:09 8 to go onto something else or what?

02:18:11 9 MR. KULWIN: Judge, if we could be heard about
02:18:13 10 something. I have a feeling that we might get into something
02:18:16 11 I am not aware -- I am concerned about something, Judge, real
02:18:20 12 quick.

02:18:20 13 THE COURT: All right.

02:18:26 14 (The following proceedings were had at sidebar outside the
02:18:31 15 hearing of the jury:)

02:18:31 16 THE COURT: He might be right or he might be wrong.
02:18:38 17 It's what he's saying.

02:18:39 18 MR. KULWIN: I want to ask him. I'm worried will he
02:18:42 19 say it's the innocence hearing.

02:18:42 20 THE COURT: So don't ask him.

02:18:44 21 MR. KULWIN: Okay.

02:18:53 22 (The following proceedings were had in open court in the
02:18:53 23 presence and hearing of the jury:)

02:18:53 24 BY MR. KULWIN:

02:18:55 25 Q. In any event, sir, the affidavit that you got is

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02:18:59 1 consistent with what Mr. Langston was saying in the death
02:19:03 2 penalty hearing, correct?
02:19:05 3 A. Yes, the sentencing hearing portion, yes.
02:19:08 4 Q. It's inconsistent with what he testified to at trial?
02:19:11 5 A. Yes.
02:19:11 6 Q. And inconsistent with what he testified in 2009, correct,
02:19:17 7 under oath?
02:19:17 8 A. Yeah, you know, I am not familiar with his testimony in
02:19:21 9 2009.
02:19:21 10 Q. All right. And without telling me what the proceeding is,
02:19:28 11 the affidavit is consistent with what his testimony was at
02:19:32 12 whatever proceeding you think occurred during that time
02:19:34 13 period?
02:19:34 14 A. You know, I haven't looked at that, his testimony from
02:19:41 15 that other proceeding, so I am not comfortable in making an
02:19:44 16 evaluation as to that.
02:19:45 17 Q. You don't know. It may be?
02:19:47 18 MR. LOEVY: Objection, your Honor. Asked and
02:19:48 19 answered.
02:19:48 20 THE COURT: Sustained. That's as good as it's going
02:19:50 21 to get Mr. Kulwin. I am now telling you to move on. I am not
02:19:53 22 asking you to move on.
02:19:54 23 MR. KULWIN: If I could have a moment, Judge.
02:20:01 24 THE COURT: Yes.
02:20:02 25 (Brief pause.)

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02:20:09 1 MR. KULWIN: No further questions, Judge

02:20:11 2 THE COURT: Redirect.

02:20:11 3 - - -

02:20:11 4 JOHN STAINTHORPE, REDIRECT EXAMINATION

02:20:11 5 BY MR. LOEVY:

02:20:13 6 Q. When you went to see Gerald Morris who asked a lot of

02:20:16 7 questions by Mr. Kulwin?

02:20:17 8 A. Yes.

02:20:17 9 Q. He could have slammed the door in his face?

02:20:20 10 A. Yes.

02:20:20 11 MR. KULWIN: Judge, objection.

02:20:21 12 THE COURT: Hang on a second.

02:20:27 13 THE COURT: Put the question again.

02:20:28 14 BY MR. LOEVY:

02:20:29 15 Q. If he had slammed the door in your face, what would you

02:20:31 16 have done?

02:20:32 17 MR. KULWIN: Objection, Judge. Calls for

02:20:34 18 speculation.

02:20:34 19 THE WITNESS: I might have tried to ask him again to

02:20:36 20 talk to me, but if he didn't want to talk to him, that was his

02:20:40 21 choice.

02:20:40 22 BY MR. LOEVY:

02:20:40 23 Q. But he did speak to you?

02:20:41 24 A. He spoke to me on two different occasions.

02:20:43 25 Q. And to state the obvious he was no longer a young man in

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02:20:46 1 his 20s by now?

02:20:48 2 MR. KULWIN: Objection, Judge, that's argumentative.

02:20:50 3 THE WITNESS: Overruled.

02:20:51 4 BY MR. LOEVY:

02:20:53 5 Q. How old would he have been 13 years after the trial, do

02:20:56 6 you remember his age?

02:20:56 7 A. I think mid to late 30s.

02:21:00 8 Q. You were asked some questions about whether there was

02:21:02 9 anything in the affidavit that you created that suggests that

02:21:04 10 there was suggestiveness. Do you remember those questions

02:21:06 11 /#-6R7B89S judge, that's not what the request question was.

02:21:10 12 It was did it say that?

02:21:11 13 THE WITNESS: Yes.

02:21:13 14 THE COURT: Okay. Well, put the question in a

02:21:15 15 different way.

02:21:15 16 BY MR. LOEVY:

02:21:15 17 Q. All right. The affidavit -- can you read paragraph 7,

02:21:20 18 please?

02:21:21 19 THE COURT: Hang on a second. Let me just get the

02:21:25 20 ELMO backup here. There you go. Paragraph 7.

02:21:28 21 THE WITNESS: Okay. Paragraph 7, a long time after

02:21:32 22 the shooting, Detective O'Callaghan showed me four photographs

02:21:35 23 to see if I could identify anyone.

02:21:36 24 THE ATTORNEY:

02:21:37 25 Q. All right. Showing you defendants' demonstrative No. 2,

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02:21:41 1 the photographs of Mr. O'Callaghan's suspects, is that
02:21:44 2 suggestive if he showed him the four people he believed were
02:21:48 3 involved in the crime?

02:21:49 4 MR. KULWIN: I am going to object.

02:21:50 5 THE COURT: Sustained. It's a matter for argument at
02:21:52 6 this point.

02:21:52 7 BY MR. LOEVY:

02:21:53 8 Q. There is nothing in this affidavit that should be read
02:21:56 9 that there wasn't suggestive?

02:21:57 10 MR. KULWIN: Objection, your Honor.

02:21:59 11 MR. LOEVY: There was a lot of questioning on this.

02:22:00 12 THE COURT: I tell you what, so, A, don't talk over
02:22:04 13 each other, and B, if I want a response to an objection, I
02:22:07 14 will ask for one. The objection is overruled.

02:22:13 15 Put the question again.

02:22:14 16 THE WITNESS: Yeah.

02:22:15 17 BY MR. LOEVY:

02:22:15 18 Q. All right. You were asked a series of questions by Mr.
02:22:18 19 Kulwin?

02:22:18 20 THE COURT: Let me put the question. Is there
02:22:20 21 anything in the affidavit that should be read that there
02:22:22 22 wasn't suggestion, that is a yes or no question, please answer
02:22:25 23 it yes or no.

02:22:26 24 THE WITNESS: No.

02:22:27 25 BY MR. LOEVY:

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02:22:27 1 Q. How about number 9, sir, can you read that paragraph?

02:22:30 2 A. After I picked out a photograph, O'Callaghan said, that's

02:22:33 3 him, right.

02:22:34 4 Q. All right. Is that suggestive?

02:22:37 5 MR. KULWIN: Same objection.

02:22:39 6 THE COURT: Sustained. Leave it for argument.

02:22:41 7 BY MR. LOEVY:

02:22:41 8 Q. You were asked a series of questions about whether you

02:22:47 9 included certain things from your partner's notes in the

02:22:50 10 affidavit. Do you remember those questions?

02:22:51 11 A. Yes.

02:22:51 12 Q. Approaching with a copy of Defendant's Exhibit 380, your

02:22:55 13 Honor.

02:22:55 14 THE COURT: Okay. Is that the notes?

02:22:59 15 MR. LOEVY: These are the notes.

02:23:00 16 BY MR. LOEVY:

02:23:01 17 Q. There are quite a few other things in the notes that are

02:23:03 18 not in the affidavit, too, correct, sir?

02:23:05 19 A. Yes.

02:23:08 20 Q. Can you read the fourth paragraph from the bottom, the one

02:23:14 21 that says?

02:23:15 22 MR. KULWIN: Judge.

02:23:15 23 BY MR. LOEVY:

02:23:16 24 Q. Said he talked?

02:23:17 25 MR. KULWIN: Judge, I object. I don't think the

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02:23:18 1 notes are in evidence. I think that we were asking --

02:23:21 2 MR. LOEVY: I can have him refresh. Sorry.

02:23:25 3 THE COURT: Ask it in a different way then.

02:23:27 4 BY MR. LOEVY:

02:23:27 5 Q. All right. Looking -- let's take it from the bottom up.

02:23:30 6 Looking at the last line, do you see that?

02:23:32 7 A. Yes.

02:23:32 8 Q. Okay. Does that refresh your recollection about what

02:23:37 9 Gerald told you about how he had been prepared by the state's

02:23:41 10 attorney's?

02:23:41 11 A. Yes.

02:23:41 12 Q. What did Gerald tell you about having been prepared by the

02:23:44 13 state's attorneys?

02:23:45 14 A. That he had been corrected many times with maps, photos,

02:23:48 15 et cetera.

02:23:49 16 MR. KULWIN: Judge, I object and move to strike. I

02:23:51 17 don't think he says that his memory was exhausted on the

02:23:53 18 point. I don't think it was really used for refreshing

02:23:57 19 recollection. It was leading.

02:23:59 20 THE COURT: Okay. Let me talk to you all over here.

02:24:07 21 (The following proceedings were had at sidebar outside the

02:24:08 22 hearing of the jury:)

02:24:08 23 THE COURT: So look, you went into the notes and

02:24:13 24 there was something in the notes that wasn't put in the

02:24:15 25 affidavit, so he's going to get to put in that there was other

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02:24:18 1 stuff in the notes that wasn't in the affidavit. If that
02:24:20 2 requires him to read from it, he is going to be permitted to
02:24:22 3 read from it. And the objection, if there is one, is
02:24:25 4 overruled.

02:24:27 5 (The following proceedings were had in open court in the
02:24:31 6 presence and hearing of the jury:)

02:24:31 7 THE COURT: Okay. All right. The objection is
02:24:33 8 overruled. You can proceed.

02:24:34 9 BY MR. LOEVY:

02:24:35 10 Q. All right. There's a lot of things in the notes that
02:24:37 11 aren't in the affidavit, correct, sir?

02:24:39 12 A. Correct.

02:24:39 13 Q. How about the sentence before it, what was also in the
02:24:42 14 notes that Gerald told you?

02:24:44 15 A. By state's attorneys at 26th Street, what to say, not to
02:24:49 16 say at trial.

02:24:50 17 Q. All right. And then moving up two bullet points above,
02:24:53 18 what were you told by Gerald about O'Callaghan?

02:24:54 19 A. That he said he talked to O'Callaghan a few days after the
02:24:58 20 murder, definitely within one week.

02:25:00 21 Q. And then how many times did he talk to O'Callaghan after
02:25:02 22 that?

02:25:03 23 A. He talked to him 10 to 12 times.

02:25:05 24 Q. All right. You didn't put that in the affidavit either?

02:25:10 25 A. Correct.

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02:25:10 1 Q. Two bullet points up, what did it tell you about Gerald
02:25:15 2 telling you about the El Rukns and the Goon Squad?
02:25:17 3 A. That the El Rukns in the other groups in the buildings, in
02:25:19 4 the neighborhood had a truce, but we, meaning Fuddy and Gerald
02:25:24 5 Morris, didn't go to the meetinging.
02:25:25 6 Q. So that in fact he told you there was a truce between the
02:25:27 7 El Rukns and the Goon Squad, correct?
02:25:29 8 A. Correct.
02:25:29 9 Q. Okay. Backing up two more bullet points, does he --
02:25:34 10 THE COURT: The point has been made at this point.
02:25:36 11 MR. LOEVY: All right.
02:25:38 12 BY MR. LOEVY:
02:25:39 13 Q. You were asked some questions about Randy Langston's
02:25:41 14 affidavit and whether there are gangs. Do you have a copy of
02:25:45 15 it in front of you, sir?
02:25:46 16 A. No.
02:25:46 17 Q. Bringing you a copy of plaintiff's 43, where was Randy
02:25:50 18 Langston when you -- when your partner took that affidavit
02:25:54 19 from him 12 or 13 years after the criminal trial?
02:25:57 20 A. He was at the Paris work camp in Paris, Illinois.
02:26:01 21 Q. Do you have any reason to believe that anybody that knew
02:26:04 22 about the case was in the Paris work camp in Paris, Illinois?
02:26:07 23 MR. KULWIN: Objection, Judge, calls for speculation.
02:26:08 24 THE COURT: Hang on a second. The objection is
02:26:15 25 sustained.

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02:26:15 1 BY MR. LOEVY:

02:26:15 2 Q. All right. You were asked some questions about an
02:26:17 3 affidavit by Gerald Morris that you hadn't seen. Do you
02:26:20 4 recall that?

02:26:20 5 A. Correct.

02:26:21 6 Q. Approaching with a copy of Plaintiff's Exhibit 24. If you
02:26:26 7 could just review that. Is there anything at all inconsistent
02:26:30 8 with what Gerald put in that affidavit that was inconsistent
02:26:33 9 with what you were told?

02:26:34 10 A. So there's two affidavits here. There is --

02:26:43 11 Q. It's basically the same story, is it not, sir?

02:26:45 12 A. Well, you know what, I can't say that.

02:26:48 13 Q. You'd have to review it?

02:26:49 14 A. I'd have to review.

02:26:51 15 MR. LOEVY: Your Honor, I'd like permission to move
02:26:55 16 on.

02:26:55 17 THE COURT: Yes.

02:26:55 18 BY MR. LOEVY:

02:26:56 19 Q. I'd like to finish asking but questions about. Mr. Kulwin
02:27:00 20 read you testimony that Randy estimated it was 80 feet away.
02:27:04 21 Do you remember that testimony?

02:27:05 22 A. Apparently, yes. Well, Judge Maloney he agreed.

02:27:07 23 Q. Leaving aside what Judge Maloney said. When you went and
02:27:12 24 used 155-foot estimate as opposed to Randy's best estimate
02:27:16 25 from the witness stand about how far he was, why did you

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02:27:20 1 choose to use the estimate to the ball field instead of
02:27:23 2 Randy's eyeballing to the end of the courtroom?
02:27:25 3 A. Because the distance from the ball field, which was I
02:27:30 4 believe still there when we went there, to the entrance to the
02:27:33 5 building appeared to be 155 feet. That appeared to be
02:27:37 6 accurate.
02:27:38 7 Q. All right. When you were asked about the James Langston
02:27:45 8 notes, do you remember Mr. Burns asking you about that?
02:27:47 9 A. Yes.
02:27:53 10 Q. Now, you had some information about James Langston at the
02:27:57 11 time before you got the concealed file, correct?
02:27:59 12 A. Yes.
02:27:59 13 Q. But did you know that James Langston was having to have
02:28:04 14 seen Ricky Baldwin's brother driving away from the shooting?
02:28:08 15 A. I don't believe I was ever aware of that.
02:28:10 16 Q. So even though you could have talked to James Langston,
02:28:13 17 would you have responded differently if you had actually known
02:28:15 18 this additional information?
02:28:16 19 A. Well, that was additional information I could have used,
02:28:20 20 but I think -- I think James wasn't around.
02:28:24 21 MR. BURNS: Objection to speculation, your Honor.
02:28:25 22 THE COURT: Overruled. It's something he testified
02:28:27 23 to at least five times this afternoon.
02:28:30 24 BY MR. LOEY:
02:28:32 25 Q. Moving to the last subject, Delbert Edwards. There was a

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02:28:34 1 suggestion in the questioning that Delbert Edwards was an El
02:28:36 2 Rukn. Do you remember that question by Mr. Burns?
02:28:38 3 A. Actually, I don't.
02:28:41 4 Q. All right. Do you have any knowledge that Delbert Edwards
02:28:44 5 was an El Rukn in any way at all?
02:28:46 6 A. No, none whatsoever. In fact, I think he denied being a
02:28:50 7 gang member.
02:28:51 8 Q. All right?
02:28:55 9 MR. LOEVY: I have no further questions, your Honor.
02:28:56 10 THE COURT: Anything based on the redirect?
02:28:58 11 MR. KULWIN: I do, Judge.
02:29:00 12 MR. BURNS: Your Honor, I have nothing. Thank you.
02:29:02 13 THE COURT: Go ahead, Mr. Kulwin.
02:29:06 14 - - -
02:29:06 15 JOHN STAINTHORPE, RE-CROSS-EXAMINATION
02:29:06 16 BY MR. KULWIN:
02:29:12 17 Q. Just a couple points, sir.
02:29:13 18 First, on the question of -- on the question of why
02:29:19 19 you used the 155 feet as opposed to the 80 feet, you said you
02:29:23 20 thought it was more accurate, right?
02:29:25 21 A. Yes.
02:29:25 22 Q. Okay. You mean the measurement was more accurate?
02:29:28 23 A. From -- yeah, the measurement from the ballpark to the
02:29:36 24 entrance of the building would be more like 155.
02:29:40 25 Q. But that would assume that Mr. Baldwin?

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02:29:45 1 A. That's the measurement I was using.

02:29:46 2 Q. But in fact, page 157, but in fact, sir, Mr. Langston
02:30:02 3 testified as follows.

02:30:03 4 "QUESTION: Where were you standing?

02:30:07 5 "ANSWER: We were standing along the sidewalk."

02:30:09 6 That's what he testified to, right, under oath?

02:30:14 7 A. Well, he said he was in the field across the street along
02:30:18 8 -- yeah, along the side of that field.

02:30:23 9 Q. No?

02:30:23 10 A. That was next to the sidewalk.

02:30:25 11 Q. Let me read it to you again?

02:30:26 12 THE COURT: He's looking at the further up on the
02:30:29 13 page part that you have highlighted there.

02:30:33 14 MR. KULWIN: That's my fault.

02:30:34 15 THE WITNESS: But the --

02:30:35 16 MR. KULWIN: That's me again.

02:30:36 17 BY MR. KULWIN:

02:30:37 18 Q. Let's just stop from the top so we can go slow. He
02:30:39 19 testified so you were in a field across the street from the
02:30:42 20 breezeway where the shooting took place; is that correct?

02:30:44 21 "ANSWER: Yes

02:30:45 22 "QUESTION: How long had you been out there before this
02:30:47 23 happened?

02:30:47 24 "ANSWER: We had been out there for 20 minutes

02:30:51 25 "QUESTION: You were standing there in the grassy area

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02:30:53 1 on the field?

02:30:54 2 "ANSWER: No

02:30:55 3 "QUESTION: Where were you standing?

02:30:56 4 "ANSWER: We were standing along the sidewalk."

02:31:01 5 A. That was the testimony, yeah.

02:31:03 6 Q. And just real quick, one other point ^ you were asked

02:31:13 7 some questions about what was in the notes that wasn't in the

02:31:19 8 affidavit. Do you remember those questions just now?

02:31:21 9 A. Yes.

02:31:21 10 Q. Okay. You put in what you believed were the most

02:31:26 11 important points in the affidavit?

02:31:28 12 A. The crucial issue was that he could not ID the people and

02:31:31 13 that's -- I pointed to the crucial issues, yes.

02:31:35 14 MR. KULWIN: Move to strike, Judge.

02:31:36 15 THE COURT: Overruled.

02:31:37 16 BY MR. KULWIN:

02:31:37 17 Q. And just to be clear, there was nothing in the notes about

02:31:44 18 him showing four photos, right?

02:31:46 19 A. Correct.

02:31:47 20 Q. And nothing in the notes of the interview that were taken

02:31:51 21 in 1999 that indicated that he ever said that Mr. O'Callaghan

02:31:55 22 said that's right after he picked out Mr. Fields or anyone

02:31:58 23 else, correct?

02:31:59 24 A. True. That's correct.

02:32:01 25 MR. KULWIN: Nothing else.

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02:32:02 1 THE COURT: Anything else?

02:32:03 2 MR. LOEVY: No, your Honor.

02:32:04 3 THE COURT: Do any of the jurors have any questions
02:32:07 4 for the witness? I do not see anybody writing. You are
02:32:09 5 excused.

02:32:10 6 THE WITNESS: Thank you.

02:32:10 7 THE COURT: While somebody is getting the next
02:32:12 8 witness, can I see the lawyers at sidebar just to talk about
02:32:17 9 scheduling. If somebody can go get the next witness.

02:32:21 10 (The following proceedings were had at sidebar outside the
02:32:33 11 hearing of the jury:)

02:32:33 12 THE COURT: So do we know if Mr. Langston is here.

02:32:35 13 MR. LOEVY: I don't think he is coming until 2:30 I
02:32:38 14 was told.

02:32:38 15 THE COURT: So based on what all you guys told me
02:32:43 16 yesterday we need to put him on at 3:00, so you are going to
02:32:46 17 need to tell somebody at your table to be out there waiting
02:32:49 18 for him and to tap you on injure shoulder and to stop.

02:32:53 19 MR. LOEVY: My exam is less than half an hour.

02:32:56 20 THE COURT: I don't care. 3:00 o'clock.

02:32:58 21 MR. LOEVY: Got it. We will take a break?

02:33:01 22 THE COURT: No.

02:33:12 23 (The following proceedings were had in open court in the
02:33:42 24 presence and hearing of the jury:)

02:33:42 25 (Witness sworn.)

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02:33:42

1

- - -

02:33:42

2

KEVIN DUFFIN, DIRECT EXAMINATION

02:33:42

3

BY MR. LOEVY:

02:33:51

4

Q. Sir, if you would state and spell your name for the

02:33:53

5

record, please.

02:33:54

6

A. Kevin Duffin, D-u-f-f-i-n.

02:33:58

7

Q. And who is your employer?

02:33:59

8

A. City of Chicago, Chicago Police Department.

02:34:01

9

Q. What is your rank with the department?

02:34:02

10

A. I am a commander of detectives.

02:34:04

11

Q. And that's a very high rank, is it not?

02:34:06

12

A. Yes, sir.

02:34:07

13

Q. In fact, there's not too many above that, is there?

02:34:10

14

A. No.

02:34:12

15

Q. All right. Let's talk about your involvement in this

02:34:16

16

case. You were not involved back in the day that it happened,

02:34:19

17

right?

02:34:19

18

A. In the early '80s?

02:34:22

19

Q. Right.

02:34:23

20

A. No, sir.

02:34:23

21

Q. You got involved later?

02:34:24

22

A. Yes, sir.

02:34:25

23

Q. At some point in either 2010 or 2011, it came to your

02:34:29

24

attention that a file had surfaced relating to the old murder,

02:34:33

25

right?

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02:34:33 1 A. Yes, sir.

02:34:33 2 Q. And as the commander, was it troubling to you that a file
02:34:39 3 that related to the old murder investigation had gone missing
02:34:43 4 for more than 20 years?

02:34:46 5 MR. MICHALIK: Object, Judge.

02:34:47 6 THE COURT: Overruled.

02:34:48 7 THE WITNESS: At the point that I became aware, I was
02:34:50 8 not commander, sir.

02:34:52 9 BY MR. LOEVY:

02:34:53 10 Q. Okay. Thanks for that clarification. What was your rank
02:34:55 11 at that time?

02:34:55 12 A. At that time I was the lieutenant assigned to Area 1.

02:34:57 13 Q. All right. But back to the question, it was nonetheless
02:35:00 14 troubling to learn that an investigative file relating to a
02:35:03 15 murder case that had been tried twice had showed up whereas it
02:35:07 16 had not been previously known of?

02:35:09 17 A. Yes, sir.

02:35:09 18 Q. And it's a big deal, an investigation file in a murder
02:35:13 19 case, right?

02:35:13 20 A. Yes, sir.

02:35:13 21 Q. So you decided to conduct an investigation to discover
02:35:18 22 where the file had been for the intervening 25 years, correct?

02:35:21 23 A. Yes, sir.

02:35:22 24 Q. And when was this investigation that you commenced, late
02:35:28 25 2011, would you say?

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02:35:29 1 A. Late fall of 2011, yeah.

02:35:31 2 Q. Why did you conduct an investigation into the missing
02:35:34 3 file?

02:35:34 4 A. To ascertain if we could determine where, who found it and
02:35:40 5 where.

02:35:41 6 Q. Who found it.

02:35:43 7 All right. Did you speak to everybody who you
02:35:46 8 thought might have access to the missing file?

02:35:48 9 A. Yes, sir.

02:35:48 10 Q. And do you recall, as you just alluded to, that there was
02:35:51 11 an issue that nobody found the unfound file?

02:35:55 12 THE COURT: Can you rephrase that?

02:35:57 13 BY MR. LOEY:

02:35:57 14 Q. All right. You had a little trouble determining who found
02:36:00 15 the missing file, right?

02:36:01 16 A. Yes.

02:36:01 17 Q. Did you speak to Sharon Colby?

02:36:04 18 A. Yes, sir.

02:36:04 19 Q. Why did you choose Sharon Colby to talk to?

02:36:07 20 A. She was one of the detectives that worked on the file
02:36:11 21 room.

02:36:11 22 Q. Did she have any answers as to who found this file?

02:36:14 23 A. She did not, no.

02:36:16 24 Q. How about Karen Willis, did you talk to her?

02:36:19 25 A. Karen Williams?

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02:36:20 1 Q. Yes. Thank you?

02:36:21 2 A. Yes, I did.

02:36:22 3 Q. Why did you pick her?

02:36:23 4 A. She also worked on the files.

02:36:25 5 Q. Did she have any answer as to who found it or where they

02:36:28 6 found it?

02:36:28 7 A. No, sir.

02:36:28 8 Q. How about Sam brown?

02:36:30 9 A. Yes, sir.

02:36:31 10 Q. Who is Sam brown?

02:36:32 11 A. Sam brown was also a detective assigned to filing.

02:36:35 12 Q. And did he have any answers?

02:36:38 13 A. He had no recollection either.

02:36:40 14 Q. John /PO*Z and detective owe Brian, same thing?

02:36:46 15 A. Same thing.

02:36:47 16 Q. Those are people you thought might have information but

02:36:49 17 they had none, right?

02:36:51 18 A. Correct.

02:36:51 19 Q. Did you talk to all the people who worked around the

02:36:53 20 files, sir?

02:36:54 21 A. To the best of my knowledge, those were the only people

02:36:59 22 that had access to the files at that time frame.

02:37:03 23 Q. You didn't leave anybody out?

02:37:04 24 A. No, sir.

02:37:04 25 Q. Were you able to determine a single thing at the

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02:37:06 1 conclusion of your investigation as to where this file had
02:37:08 2 been for the last 25 years?
02:37:10 3 A. None of the aforementioned people could recall having
02:37:15 4 located that file.
02:37:15 5 Q. If you couldn't find the person who found it then you
02:37:18 6 couldn't find where the person who found it found it, correct?
02:37:22 7 A. Correct.
02:37:22 8 Q. So you were unable to determine whether the file had been
02:37:25 9 for the previous 25 years?
02:37:26 10 A. Yes, sir.
02:37:27 11 Q. Now, you had a hunch where the file had been, had you not?
02:37:30 12 A. Yes, sir.
02:37:30 13 Q. Because the department had a place where it kept files
02:37:33 14 like this, right, sir?
02:37:34 15 A. Yes, sir.
02:37:35 16 Q. And your hypothesis was perhaps the file was sitting in a
02:37:40 17 file cabinet at the Area 1 police department, right?
02:37:43 18 A. Yes, sir.
02:37:44 19 Q. Because in that file cabinet at Area 1, where was that
02:37:47 20 file cabinet, sir?
02:37:48 21 A. At what point?
02:37:49 22 Q. At the point, say, back in the '80s?
02:37:53 23 A. I have no knowledge as to where it was bang in the '80s.
02:37:58 24 Q. The file cabinet might have been moved?
02:38:00 25 A. Yes, sir.

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02:38:00 1 Q. But this was the file cabinet that was in the detective's
02:38:03 2 division, right?

02:38:03 3 A. Yes, sir.

02:38:03 4 Q. And your hypothesis was that this investigative file was
02:38:07 5 probably sitting in a drawer in chronological order in the
02:38:11 6 file cabinet where the investigative files are kept, correct?

02:38:13 7 A. Yes, sir.

02:38:14 8 Q. And you have no reason, as you sit here today, to believe
02:38:17 9 that that's not exactly where the file was, do you?

02:38:19 10 A. No, sir.

02:38:20 11 Q. Did you check and see if the file cabinet where this file
02:38:33 12 was had other files that had not been turned over?

02:38:37 13 A. No, sir.

02:38:38 14 Q. Let's turn back to the mid '80s. Was it the policy and
02:38:43 15 practice of the Chicago Police Department to turn over
02:38:46 16 investigative files like this?

02:38:47 17 MR. MICHALIK: Objection, foundation.

02:38:49 18 THE COURT: Lay the foundation first.

02:38:52 19 BY MR. LOEVY:

02:38:52 20 Q. When did you first become a Chicago police officer, sir?

02:38:54 21 A. 14th of June, 14th of June 1982.

02:38:58 22 Q. All right. So you were a member of the Chicago Police
02:39:01 23 Department in the 1984, 85, 86 time period, correct?

02:39:05 24 A. I was a patrolman assigned to the Englewood district, yes,
02:39:09 25 sir.

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02:39:09 1 Q. Were you familiar with the policies and the practices of
02:39:11 2 the Chicago Police Department at the time?

02:39:13 3 A. I was familiar with patrol division policies and
02:39:18 4 practices.

02:39:18 5 Q. All right. Did you have any knowledge about whether the
02:39:21 6 Chicago Police Department had a policy and practice to turn
02:39:24 7 over investigative files like this in 1984?

02:39:27 8 A. I have no knowledge to that.

02:39:28 9 Q. Do you know having -- you've subsequently become a
02:39:35 10 detective, correct?

02:39:35 11 A. I was a sergeant of the detective and a lieutenant of the
02:39:41 12 detectives.

02:39:41 13 Q. Does that mean you are a detective or you just supervise
02:39:44 14 detectives?

02:39:45 15 A. I just supervise detectives.

02:39:46 16 Q. Tell the jury what year you were a sergeant of the
02:39:48 17 detectives?

02:39:48 18 A. I went to the detective division in November of 1999.

02:39:52 19 Q. And when did you get promoted to lieutenant?

02:39:57 20 A. In October of 2010.

02:40:00 21 Q. So you are familiar with the policies and the practices of
02:40:04 22 the police department as they pertained to detective business,
02:40:07 23 correct?

02:40:08 24 A. From the late '90s through current day, yes.

02:40:13 25 Q. All right. Let's talk -- changing topics, let's talk

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02:40:16 1 about what detectives do. They solve crimes, correct?

02:40:19 2 A. Yes, sir.

02:40:19 3 Q. They gather information is that a fair summary?

02:40:22 4 A. Yes, sir.

02:40:22 5 Q. And that information in the course of a criminal

02:40:26 6 investigation has to be turned over to the criminal justice

02:40:29 7 system in criminal cases, correct?

02:40:30 8 A. Yes, sir.

02:40:30 9 Q. So it has to be written down, right?

02:40:33 10 A. Memorialized, yes, sir.

02:40:34 11 Q. A big part of the detective's job is to take notes, would

02:40:37 12 you agree with that?

02:40:38 13 A. Yes, sir.

02:40:38 14 Q. Tell the jury why detectives have to take notes?

02:40:40 15 A. To refresh their memory when they memorialize the case.

02:40:45 16 Q. In other words, the detective doesn't know if they're

02:40:48 17 going to go to court in two days or 20 years, right?

02:40:50 18 A. Yes, sir.

02:40:50 19 Q. Would you agree with me that for that reason the a

02:40:53 20 critical part of a detective's responsibility to be a very

02:40:57 21 good chronicler of details?

02:40:59 22 A. Yes, sir.

02:41:00 23 Q. Would you also agree that when you start a criminal

02:41:01 24 investigation, you don't know what fact is going to be

02:41:03 25 relevant ten months from now?

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02:41:05 1 A. Yes, sir.

02:41:06 2 Q. And that means you have to write everything down because
02:41:09 3 you don't know in advance what's going to turn out to be
02:41:11 4 pertinent and what's not, correct?

02:41:13 5 A. That's correct.

02:41:13 6 Q. And sometimes in these investigations, detectives work
02:41:16 7 with each other, work with other detectives, correct?

02:41:18 8 A. Yes, sir.

02:41:19 9 Q. Is that a reason why you also have to write things down?

02:41:22 10 A. Yes, sir.

02:41:23 11 Q. Can you explain?

02:41:24 12 A. Well, if two different detectives are working on it and
02:41:28 13 one detective develops information that the other one doesn't
02:41:32 14 have, then he can refer back to his notes.

02:41:34 15 Q. All right. And then the notes are supposed to turn into
02:41:37 16 reports, are they not?

02:41:38 17 A. Yes, sir.

02:41:38 18 Q. Explain to the jury what that means.

02:41:40 19 A. Detectives write closing supplementary reports, well, if
02:41:47 20 they close the case, a closing supplementary reports that
02:41:52 21 documents the entire investigation from inception to the end.

02:41:54 22 Q. That's the end of the investigation. But as the
02:41:56 23 investigation is progressing, they are supposed to create
02:42:00 24 supplementary reports, correct?

02:42:01 25 A. Yes, progress reports.

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02:42:03 1 Q. Well, supplementary reports or progress report?

02:42:08 2 A. A progress report is a type of supplementary report.

02:42:11 3 Q. I thought a general progress report is notes, right,

02:42:13 4 handwritten notes, supposed to be on general progress reports?

02:42:16 5 A. Semantics here, general progress notes are handwritten

02:42:23 6 notes.

02:42:23 7 Q. Notes, right?

02:42:24 8 A. A progress report is a computerized report that comes out

02:42:30 9 when they enter the report into the CRIS system.

02:42:32 10 Q. All right. A supplementary report is when we think of

02:42:36 11 police reports, official police reports, they're supplementary

02:42:39 12 reports, right?

02:42:39 13 A. There are multiple times of supplementary reports. There

02:42:43 14 can be evidence supplements, progress supplements, lab

02:42:47 15 supplements.

02:42:47 16 Q. All I'm getting at, maybe we are getting semantic, a

02:42:51 17 detective take a lots of notes, right?

02:42:53 18 A. Yes.

02:42:53 19 Q. And they take the pertinent stuff in the notes and create

02:42:56 20 police reports?

02:42:57 21 A. Yes.

02:42:58 22 Q. And that's a big part of the job, right?

02:43:00 23 A. Yes.

02:43:00 24 Q. All right. Now, once the information is gathered, it has

02:43:07 25 to be disclosed to the criminal justice system. We already

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02:43:09 1 talked about that, right?

02:43:10 2 A. Yes.

02:43:10 3 Q. That's important both to make sure that the right -- the
02:43:14 4 victim gets justice and the right guy is prosecuted, right?

02:43:17 5 A. Yes.

02:43:18 6 Q. And it's also important to the rights of the accused,
02:43:21 7 right?

02:43:21 8 A. Yes, sir.

02:43:21 9 Q. Let's talk about the Chicago Police Department's policies
02:43:23 10 and practices as far as what's supposed to be memorialized.

02:43:27 11 Isn't it true that if someone is an eyewitness to the
02:43:30 12 event, it's important to create a document that records what
02:43:34 13 they saw, all the details?

02:43:36 14 A. Yes, sir.

02:43:37 15 MR. MICHALIK: Objection, vagueness as to time frame.

02:43:39 16 THE COURT: I can't hear you.

02:43:40 17 MR. MICHALIK: Vagueness as to time frame.

02:43:42 18 THE COURT: Yeah. You need to set.

02:43:45 19 BY MR. LOEVY:

02:43:45 20 Q. Do you have any reason to believe that the policies in the
02:43:47 21 mid '80s were different from when you were a supervisor?

02:43:50 22 THE COURT:

02:43:52 23 BY MR. LOEVY:

02:43:52 24 Q. About documentation of pertinent information?

02:43:55 25 A. No, sir.

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02:43:55 1 Q. You believe they are consistent, do you not?

02:43:58 2 A. Yes, sir.

02:43:58 3 Q. All right. Then let's talk about --

02:44:00 4 THE COURT: You can proceed.

02:44:01 5 BY MR. LOEY:

02:44:02 6 Q. If a person is investigating a murder, and they come
02:44:07 7 across a person who purports to be an eyewitness, what's
02:44:11 8 supposed to happen if that person has information about what
02:44:13 9 the guy looked like?

02:44:14 10 A. The detective would write that down.

02:44:18 11 Q. They would write down, for example, whether they were
02:44:22 12 white or black, whether they had braids, whether they were
02:44:25 13 tall or short, any information available, right?

02:44:27 14 A. Absolutely.

02:44:27 15 Q. Now, you have any hesitation that any description an
02:44:30 16 eyewitness should provide should be documented in writing?

02:44:34 17 A. I'm not sure I understand the question.

02:44:40 18 Q. It doesn't make sense. There is no way a detective would
02:44:43 19 not write down a description of a witness if an eyewitness had
02:44:46 20 a description?

02:44:47 21 A. No.

02:44:47 22 Q. You agree with me, right?

02:44:48 23 A. Yes, I agree with you.

02:44:49 24 Q. And certainly the detective should write down the
02:44:51 25 description of the eyewitness before the detective shows him

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02:44:54 1 photographs of the suspects, you would agree with that, too,
02:44:56 2 right?

02:44:57 3 A. Yes.

02:44:57 4 Q. Can you think of any reason why a detective would want to
02:45:01 5 show the eyewitness a suspect before they memorialized what
02:45:06 6 the eyewitness was claiming the guy looked like?

02:45:09 7 A. If an eyewitness knew a suspect but didn't know his name
02:45:18 8 -- like a street name or something, I could envision a
02:45:22 9 detective might show a photo before taking the physical
02:45:24 10 description.

02:45:25 11 Q. Any other scenario?

02:45:26 12 A. No.

02:45:26 13 Q. All right. Well, let's go back to the one you identified.
02:45:29 14 If the person -- if an eyewitness said I saw Candace shoot the
02:45:33 15 person, you should write down I know the person and I saw they
02:45:38 16 did it, right?

02:45:39 17 A. Yes, sir.

02:45:39 18 Q. Is there any equivocation, any exception that says if an
02:45:42 19 eyewitness says I know the guy who did it, I know who did it
02:45:45 20 that the detective has to memorialize that?

02:45:47 21 A. No.

02:45:49 22 Q. You agree with me, right?

02:45:51 23 A. Yes.

02:45:51 24 Q. That ensures the fairness of the process, correct?

02:45:55 25 A. Yes.

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02:45:56 1 Q. How about suspects in the murder. If eyewitnesss or other
02:46:00 2 witnesses give the detectives suspects who might have done it,
02:46:04 3 do the detectives have to write that down?
02:46:06 4 A. Yes, sir.
02:46:06 5 Q. They have to write do you know who is a suspect, right?
02:46:09 6 A. Yes.
02:46:09 7 Q. And they have to write down why that person is a suspect,
02:46:12 8 right?
02:46:12 9 A. Yes.
02:46:12 10 Q. Why is that so important?
02:46:13 11 A. To further the investigation.
02:46:16 12 Q. You don't know two years from now if new information is
02:46:19 13 going to come and people are going to change I didn't remember
02:46:22 14 stories, right?
02:46:22 15 A. Yes.
02:46:23 16 Q. You have to lock them in, right?
02:46:24 17 A. Yes.
02:46:24 18 Q. Tell the jury what it means to lock somebody in with a
02:46:28 19 report?
02:46:28 20 A. As simple as it sounds, you're locking in that statement
02:46:34 21 that night that that person gives you because sometimes down
02:46:37 22 the road, witnesses change their version for one reason or
02:46:41 23 another.
02:46:41 24 Q. And the person who is accused of a crime has a right to
02:46:46 25 confront the witness with the fact that they changed their

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02:46:48 1 version, right?

02:46:49 2 A. Absolutely.

02:46:49 3 Q. Did the policies in the Chicago Police Department require
02:46:52 4 the detective to write down the original version?

02:46:54 5 A. Yes.

02:46:54 6 Q. How about confessions, if somebody supposedly confesses to
02:47:00 7 a crime, does that have to get written down?

02:47:02 8 A. Yes.

02:47:03 9 Q. Does that get documented in a police report?

02:47:05 10 MR. MICHALIK: I am going to object to the relevance.

02:47:06 11 THE COURT: Overruled. You can answer.

02:47:09 12 THE WITNESS: I'm sorry.

02:47:10 13 BY MR. LOEVY:

02:47:11 14 Q. For example, if Anthony Sumner gave a confession or said
02:47:15 15 that somebody else gave a confession, is that the kind of
02:47:17 16 information that goes in a police report?

02:47:18 17 A. Yes, sir.

02:47:19 18 Q. How about if Anthony Sumner said my buddy Earl Hawkins
02:47:25 19 committed a crime, is that the information that would go in a
02:47:27 20 police report?

02:47:27 21 A. Yes, that would go in a police report.

02:47:29 22 Q. You can say yes and we can agree that that is an
02:47:32 23 absolutely firm requirement of the Chicago Police Department
02:47:34 24 to memorialize that information?

02:47:36 25 A. Yes, sir.

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02:47:37 1 Q. As soon as practical as possible, correct?

02:47:40 2 A. Yes, sir.

02:47:41 3 Q. Are you familiar with the change in the Chicago Police
02:47:48 4 Department's policies and practices in 1983 or is that
02:47:51 5 something you're not familiar with?

02:47:52 6 A. Change as to what?

02:47:55 7 Q. When special order 83.1 was enacted, is that something you
02:48:00 8 have familiarity with?

02:48:01 9 A. I am not sure.

02:48:03 10 MR. LOEVY: All right. I have no further questions,
02:48:05 11 your Honor. Thank you.

02:48:05 12 THE COURT: Mr. Michalik.

02:48:07 13 MR. MICHALIK: Thank you, your Honor.

02:48:20 14 - - -

02:48:20 15 KEVIN DUFFIN, CROSS-EXAMINATION

02:48:20 16 BY MR. MICHALIK:

02:48:21 17 Q. Good afternoon, commander.

02:48:22 18 A. Good afternoon.

02:48:23 19 Q. Let's go through your background a little bit more. I
02:48:25 20 know you talked about it in bits and pieces. Can you tell the
02:48:30 21 ladies and gentlemen of the jury when you started with the CPD
02:48:33 22 and when your assignment was?

02:48:34 23 A. 14, June 1982 was my appointment date and out of the
02:48:38 24 academy I was assigned to the Englewood district.

02:48:40 25 Q. What was your rank at the time?

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02:48:41 1 A. He was a patrolman.

02:48:43 2 Q. How long did you work as a patrolman for the police
02:48:46 3 department?

02:48:46 4 A. Until 1996 at which time I was promoted to sergeant.

02:48:54 5 Q. And where were you -- where was your first assignment as a
02:49:00 6 sergeant?

02:49:00 7 A. I was back in Englewood.

02:49:03 8 Q. Okay. Did you have a different position after you were a
02:49:07 9 sergeant?

02:49:07 10 A. For the next two years until 98, I was a tactical sergeant
02:49:12 11 in Englewood and in '98, I became the Area 1 saturation team
02:49:21 12 sergeant.

02:49:21 13 Q. And for the ladies and gentlemen of the jury, can you
02:49:23 14 explain what Area 1 is?

02:49:25 15 A. The city's divided, back then it was 25 police districts
02:49:31 16 and there were five different areas, Area 1 based at 51st and
02:49:37 17 Wentworth, it encompassed the 7th, eighth, 9th, 2nd and 21st
02:49:42 18 districts on the south side of Chicago.

02:49:45 19 Q. All right. Now, you talked a little bit the detectives.
02:49:52 20 Are there different kinds of detectives that work in Area 1?

02:49:55 21 A. Yes.

02:49:57 22 Q. What are they, if you can just briefly explain.

02:50:00 23 A. Well, we have detectives who work exclusively in
02:50:04 24 homicides, detectives who work on robberies, detectives who
02:50:07 25 work on burglaries, detectives who work on sex crimes and

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02:50:10 1 detectives who work on youth related crimes.

02:50:12 2 Q. All right. And you told us that your current rank is

02:50:16 3 commander?

02:50:16 4 A. Yes, sir.

02:50:17 5 Q. And when were you promoted to that position?

02:50:22 6 A. In February of 2014.

02:50:27 7 Q. Okay. You were asked some questions about files and

02:50:32 8 supplementary reports and the CRIS system. Could you explain

02:50:35 9 to the ladies and gentlemen of the jury what the CRIS system

02:50:37 10 is?

02:50:37 11 A. CRIS is a automated computer system where the detectives

02:50:44 12 type -- well, they used to type the reports on pieces of

02:50:48 13 paper. Now it's all computerized. It goes, the name of the

02:50:52 14 system is the CRIS system. I forget what the acronym stands

02:50:56 15 for.

02:50:56 16 Q. Do you know when the CRIS system was first adopted by the

02:50:59 17 police department?

02:51:00 18 A. I want to say in 2000, 2001.

02:51:07 19 Q. So back in 1985, and 1986, in that time frame and then

02:51:12 20 1984, this CRIS system did not exist?

02:51:15 21 A. No, sir.

02:51:15 22 Q. Do you know how police officers would prepare their

02:51:22 23 reports prior to the CRIS system?

02:51:24 24 A. Manual typewriter.

02:51:26 25 Q. Now, this first -- this file that you were talking about,

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02:51:32 1 Exhibit 1, which Mr. Loevy has right here, this first came to
02:51:36 2 your attention in 2011?
02:51:39 3 A. Late spring of 2011, yes.
02:51:41 4 Q. All right. And what were you told about this file?
02:51:45 5 A. I was told by commander Walsh, who was the commander of
02:51:52 6 Area 1 at the time that that file was going to be the subject
02:51:55 7 of some litigation.
02:51:55 8 Q. All right. Were you told at that time that this file had
02:51:58 9 been missing for a period of time?
02:52:00 10 A. No, sir, I was not.
02:52:02 11 Q. Were you told any details at all about this file?
02:52:04 12 A. No, sir, not at that time.
02:52:06 13 Q. Did anyone ever tell you that this file had been hidden?
02:52:11 14 A. No, sir.
02:52:11 15 Q. All right. When you were told that this file might become
02:52:23 16 the subject of litigation, what, if anything, did you do with
02:52:26 17 it?
02:52:26 18 A. I secured it in my office.
02:52:29 19 Q. And why did you do that?
02:52:30 20 A. I was told that counselors from Dykema would be contacting
02:52:38 21 me and I figured it was the prudent thing to do, I would keep
02:52:41 22 it in my office for ease of access.
02:52:43 23 Q. Did attorneys eventually come to your office to look at
02:52:46 24 these files?
02:52:46 25 A. Yes.

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02:52:47 1 Q. Did attorneys besides attorneys from Dykema come to look
02:52:50 2 at this file?

02:52:50 3 A. Yes.

02:52:51 4 Q. Do you remember anyone, Ms. Gorman, coming to look at this
02:52:53 5 file?

02:52:54 6 A. Yes, sir.

02:52:55 7 Q. You were also asked some questions regarding your
02:53:00 8 investigation into this particular file and where it had been
02:53:06 9 found?

02:53:06 10 A. Yes.

02:53:06 11 Q. Okay. Were you able to determine where the file had been
02:53:14 12 before it was found in 2010?

02:53:16 13 A. I was not able to determine that, no.

02:53:18 14 Q. Okay. Your understanding was, though, that the file was
02:53:21 15 found in 2010?

02:53:23 16 A. Yes, sir.

02:53:24 17 Q. And it was your belief that it was found at Area 1?

02:53:28 18 A. Yes, sir.

02:53:29 19 Q. Do you have a belief as to who it was that found this
02:53:32 20 file?

02:53:32 21 A. I believe it was probably detective Sam Riley.

02:53:38 22 MR. LOEVY: Objection, foundation.

02:53:42 23 BY MR. MICHALIK:

02:53:43 24 Q. Why do you believe that?

02:53:43 25 A. Sam was the primary ^ file guy at that time, so.

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02:53:48 1 Q. And when you say at that time, you mean in May or June of
02:53:51 2 2010?

02:53:51 3 A. Yes.

02:53:51 4 Q. I know you talked to a lot of other file persons or people
02:53:58 5 who had access to the filing system at Area 1?

02:54:00 6 A. Yes, sir. I did, yes.

02:54:05 7 Q. Why was it that you thought it was Sam as opposed to
02:54:09 8 anyone else?

02:54:10 9 A. Well, like I said, Sam was the primary guy, the other
02:54:14 10 people, Karen Williams, Sharon Colby, if Sam was off for some
02:54:20 11 reason or if he was on vacation, they would fill in, but it
02:54:23 12 just seemed statistically that the odds were that he was the
02:54:27 13 one that found it.

02:54:28 14 Q. I think you told Mr. Loevy that you had talked to Sam
02:54:31 15 brown as part of your investigation?

02:54:32 16 A. I did.

02:54:33 17 Q. And Mr. Brown told you that he did not recall if he was
02:54:37 18 the person who found this file, correct?

02:54:39 19 A. He could not recall, yes, sir.

02:54:41 20 Q. Do you find it unusual or did you find it unusual in the
02:54:44 21 investigation that Mr. Brown was unable to tell you whether he
02:54:48 22 was the person that found this file?

02:54:50 23 A. No, sir.

02:54:50 24 Q. Why not?

02:54:51 25 A. Sam routinely pulled 20, 30 files a day, made copies and

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02:55:00 1 sent them out, so the fact that one didn't stick out in his
02:55:03 2 mind, I didn't find that surprising at all.
02:55:06 3 Q. Do you recall when it was that you had asked Sam if he had
02:55:10 4 ever found this file?
02:55:11 5 A. I'm sorry. I didn't --
02:55:14 6 THE COURT: When did you ask him?
02:55:16 7 BY MR. MICHALIK:
02:55:16 8 Q. When did you ask him if he found the file?
02:55:19 9 A. Late fall of 2011.
02:55:21 10 Q. And you were asking him about a file that someone had
02:55:24 11 found in May or June of 2010?
02:55:27 12 A. 18 months prior, yes.
02:55:29 13 Q. In 2010, at Area 1, where was the file cabinet where you
02:55:35 14 believe this file was found?
02:55:36 15 A. Second floor.
02:55:41 16 Q. Did anything happen in 2012 that caused that file cabinet
02:55:45 17 to be moved from the second floor at Area 1?
02:55:48 18 A. Yes, sir.
02:55:50 19 Q. What was that?
02:55:51 20 A. In March of 2012, there was a consolidation of detective
02:55:58 21 areas. I previously said there had been five detective areas,
02:56:04 22 they were consolidated down to three in March of 2012,
02:56:07 23 resulting in Area 1 absorbing some of the districts and open
02:56:13 24 investigations from area 4 and area 5, so due to that, we
02:56:19 25 inherited a lot more files.

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02:56:22 1 Q. So if Area 1 no longer existed, what was it called?

02:56:25 2 A. It was referred to as area central.

02:56:27 3 Q. Where was area central located?

02:56:29 4 A. 51st and went worth.

02:56:32 5 Q. That's where Area 1 was prior to that?

02:56:35 6 A. Yes, sir.

02:56:36 7 Q. Where was the file cabinet moved?

02:56:38 8 A. Shortly after the consolidation, it was moved down to the
02:56:42 9 basement of the building at 51st and Wentworth.

02:56:46 10 Q. Were there any other file cabinets that were moved from
02:56:49 11 the second floor down to the basement at area central?

02:56:52 12 A. Multiple file cabinets, yes.

02:56:53 13 Q. Were there file cabinets moved to the basement from the
02:56:56 14 other areas that were sending their files to area central?

02:56:59 15 A. Yes, sir.

02:57:00 16 Q. Why would they put it in the basement?

02:57:03 17 A. Because we had room down in the basement.

02:57:05 18 Q. Were the file cabinets moved down into the basement so
02:57:09 19 they could be hidden?

02:57:10 20 A. No, sir.

02:57:11 21 Q. Were you ever told to keep the existence of the file
02:57:15 22 cabinets in the basement a secret?

02:57:17 23 A. No, sir.

02:57:29 24 MR. MICHALIK: Can I can have a moment, your Honor.

02:57:31 25 THE COURT: Sure.

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02:57:31 1 (Brief pause.)

02:58:06 2 MR. MICHALIK: I have no further questions, your

02:58:08 3 Honor. Thank you.

02:58:09 4 THE COURT: Mr. Kulwin.

02:58:09 5 MR. KULWIN: Yes.

02:58:10 6 - - -

02:58:10 7 KEVIN DUFFIN, CROSS-EXAMINATION

02:58:10 8 BY MR. MICHALIK:

02:58:19 9 Q. Commander Duffin?

02:58:21 10 A. Yes.

02:58:21 11 Q. A couple questions. You were asked some questions about

02:58:25 12 policemen locking people in written reports. Do you remember

02:58:28 13 those questions?

02:58:28 14 A. Yes, sir.

02:58:29 15 Q. Okay. So like when a detective is interviewing a suspect,

02:58:34 16 it's important for them to write down -- put in the report

02:58:37 17 what the suspect says, correct?

02:58:39 18 A. Yes, sir.

02:58:40 19 Q. Okay. And, sir, as a commander or supervisor of

02:58:45 20 detectives, have you ever encountered a situation in your

02:58:49 21 experience where a suspect of a double murder who has been

02:58:53 22 arrested and brought to the police station is not asked about

02:58:56 23 the double murder by the policemen?

02:58:58 24 A. I can't imagine that, no.

02:58:59 25 Q. That could never occur, right?

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02:59:01 1 A. Right.

02:59:02 2 Q. And you were asked a bunch of questions about GPR that
02:59:13 3 sometimes are notes, right?

02:59:14 4 A. Yes.

02:59:15 5 Q. Progress reports. Is it fair to say that a detective can
02:59:19 6 put information that he gathers in an investigation directly
02:59:21 7 into a supplemental report without having to fill out a
02:59:25 8 written GPR?

02:59:26 9 A. I wouldn't say it's completely impossible, but it would be
02:59:32 10 very rare.

02:59:32 11 Q. Okay.

02:59:41 12 MR. KULWIN: Nothing else.

02:59:43 13 THE COURT: Redirect.

02:59:43 14 - - -

02:59:43 15 KEVIN DUFFIN, REDIRECT EXAMINATION

02:59:43 16 BY MR. LOEVY:

02:59:45 17 Q. Why is that?

02:59:45 18 A. Why is what?

02:59:47 19 Q. You just answered the question if you make a GPR, you say
02:59:50 20 it's supposed to be in a report and you said it would be very,
02:59:53 21 very rare. What's the protocol?

02:59:54 22 A. Well, I mean, depending upon the type of crime, if you're
02:59:59 23 investigating a broken car window, someone's car window was
03:00:04 24 broken and you are calling the victim and he has no
03:00:07 25 information on the offender, I would imagine that detective

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03:00:09 1 could put that right -- he wouldn't need to do GPRs, it's a
03:00:14 2 telephone interview and he is typing his report as he talks.
03:00:18 3 Q. Let's keep it to murders and serious crimes?
03:00:20 4 A. All crime is serious. Murder, I can't imagine it would
03:00:24 5 happen, no.
03:00:24 6 Q. You were asked about the file cabinets moving into the
03:00:28 7 basement so I understand, you're saying the file cabinets
03:00:31 8 moved into the basement but after this file was found, right?
03:00:34 9 A. Yes.
03:00:35 10 Q. So when the file was found, the file cabinet was still in
03:00:38 11 the detective's division, right?
03:00:39 12 A. On the second floor of 51st and Wentworth, yes, sir.
03:00:43 13 MR. LOEVY: No further questions.
03:00:44 14 THE COURT: Anything based on the redirect?
03:00:45 15 MR. MICHALIK: No, your Honor.
03:00:46 16 MR. KULWIN: No your Honor.
03:01:05 17 THE COURT: Do the jurors have questions? . Sidebar.
03:01:09 18 THE COURT: Do we know if Mr. Langston is here?
03:01:11 19 MR. LOEVY: He is not here. We have witnesses we can
03:01:14 20 fill up the afternoon.
03:01:15 21 THE COURT: The question is why did you have a hunch,
03:01:18 22 close quote, that the file was in the file cabinet in the
03:01:23 23 basement of Area 1 and what is the basis of your hunch. Does
03:01:29 24 anybody have a problem. I think the word was used in the
03:01:31 25 question and he adopted it with his answer.

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03:01:33 1 MR. LOEVY: I have no objection.

03:01:34 2 THE COURT: Okay. ^ open court.

03:01:42 3 THE COURT: The question was asked by one of the
03:01:44 4 lawyers whether you had a hunch where the file had been and
03:01:48 5 you said you had a hunch that it had -- you responded that it
03:01:51 6 you thought it had been in the detective definition at Area 1.
03:01:54 7 Why was it that you thought that when this all came about?

03:01:59 8 THE WITNESS: Well, it only seemed to make sense. It
03:02:01 9 was a case that had been -- I believe it was originally from
03:02:06 10 area 3 which was consolidated into Area 1. It was an Area 1
03:02:11 11 investigation, and.

03:02:14 12 THE COURT: So it was logical that that's where it
03:02:17 13 would be.

03:02:18 14 THE WITNESS: Yes.

03:02:19 15 THE COURT: I know these numbers change from time to
03:02:21 16 time. It might have been originally area 3, but eventually
03:02:23 17 that became part of Area 1 which is where the file was found?

03:02:28 18 THE WITNESS: Yes, sir.

03:02:28 19 THE COURT: Any follow up based on that.

03:02:30 20 MR. LOEVY: Briefly.

03:02:31 21 BY MR. LOEVY:

03:02:32 22 Q. Nothing about your investigation gave you any reason to
03:02:33 23 believe that the file wasn't exactly where it belonged, right?

03:02:36 24 A. Nothing, no.

03:02:37 25 MR. LOEVY: I have no further questions.

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03:02:40

1

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03:02:40

2

^ WITNAME, RECROSS-EXAMINATION

03:02:41

3

BY MR. LOEVY:

03:02:41

4

BY MR. MICHALIK:

03:02:42

5

Q. When you say it was exactly where it was where it belonged
you are talking about in 2010?

03:02:45

6

03:02:47

7

A. Yes, sir.

03:02:48

8

MR. MICHALIK: All right.

03:02:48

9

THE COURT: You are excused. Please call the next

03:02:51

10

witness.

03:02:51

11

MR. LOEVY: Your Honor, we call Officer Melean.

03:03:12

12

THE COURT: There is another witness coming this

03:03:15

13

afternoon, that if that person comes in, we are going to

03:03:18

14

interrupt the testimony and put this on pause. I am basically

03:03:22

15

asking them to have somebody keep an eye on whether the person

03:03:28

16

gets here. Just so you know, the reason why we're going to

03:03:34

17

get a witness from another room is that typically the rule is

03:03:38

18

witnesses are testifying about facts don't listen to the

03:03:40

19

testimony of other witnesses unless they are parties to the

03:03:43

20

case. We have a little room across the hall where people

03:03:46

21

wait.

03:04:11

22

(Witness sworn.)

03:04:21

23

THE COURT: All right. You can proceed.

03:04:22

24

- - -

03:04:22

25

FREDERICK MELEAN, DIRECT EXAMINATION

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03:04:22 1 BY MS. GORMAN:

03:04:26 2 Q. Good afternoon, Sergeant.

03:04:26 3 A. Lieutenant.

03:04:27 4 Q. Congratulations on the promotion.

03:04:29 5 A. Thanks.

03:04:31 6 Q. Lieutenant, could you state your name?

03:04:33 7 A. Lieutenant Frederic Melean, M-e-l-e-a-n.

03:04:36 8 Q. Obviously, you're an employee of the Chicago Police

03:04:42 9 Department in your uniform. How long have you been an

03:04:44 10 employee of the police department?

03:04:44 11 A. Almost 24 years.

03:04:47 12 Q. I want to draw your attention to the period of 2005 to

03:04:51 13 2010 when you were the administrative sergeant for records?

03:04:56 14 A. Yes.

03:04:56 15 Q. Is that correct?

03:04:57 16 That was from February of 2005 to April of 2010?

03:05:00 17 A. Yes.

03:05:00 18 Q. And as part of your many duties as an administrative

03:05:05 19 sergeant, you were in charge of the subpoena unit isn't that

03:05:09 20 correct? Or you were a supervisor over the subpoena unit?

03:05:12 21 A. Yes, I was one of the supervisors, correct.

03:05:13 22 Q. And subpoenas would come in seeking criminal records from

03:05:18 23 homicides and other crimes; is that correct?

03:05:20 24 A. All kinds of crimes.

03:05:23 25 Q. And the subpoenas would come in either from state's

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03:05:28 1 attorneys, prosecutors, or they'd come in from defense

03:05:31 2 attorneys; is that correct?

03:05:32 3 A. Correct.

03:05:32 4 Q. And if there was a problem with a subpoena, if someone
03:05:36 5 that had filed a subpoena with the police department ran into
03:05:39 6 a problem, you were sometimes the person that would be
03:05:42 7 contacted; isn't that correct?

03:05:43 8 A. Occasionally, yes.

03:05:44 9 Q. Occasionally.

03:05:45 10 And just so that the jury knows, it's a requirement
03:05:49 11 when there is a subpoena to provide the materials as part of
03:05:52 12 the criminal justice system; isn't that correct?

03:05:54 13 A. Yes.

03:05:54 14 Q. Now, I'm drawing your attention to January of 2006, the
03:06:01 15 subpoena came into your unit. Do you recall that?

03:06:04 16 A. I didn't receive a subpoena myself, but I recall getting a
03:06:10 17 fax from an attorney.

03:06:12 18 Q. This is exhibit, Plaintiff's Exhibit 36.

03:06:15 19 THE COURT: The computer?

03:06:17 20 MS. GORMAN: This has been admitted.

03:06:19 21 THE COURT: I just need to know, is it the computer
03:06:21 22 or the ELMO?

03:06:22 23 MS. GORMAN: It's the computer.

03:06:23 24 THE COURT: Got it. Thanks.

03:06:24 25 MS. GORMAN: It's been admitted.

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03:06:32 1 THE COURT: 36.

03:06:34 2 BY MS. GORMAN:

03:06:35 3 Q. Do you see this subpoena?

03:06:36 4 A. Yes, I do.

03:06:37 5 Q. It's dated January 27th, 2006?

03:06:41 6 A. Correct.

03:06:41 7 Q. And it's a subpoena from ^ Jean ^ Gene Snyder, one of the

03:06:46 8 attorneys for Nathson Fields; is that correct?

03:06:47 9 A. That's correct.

03:06:48 10 Q. And if you look at page 3 of the subpoena, I'm sorry, page

03:06:54 11 4 of the subpoena, there's a rider, a document request. Do

03:07:01 12 you see that?

03:07:03 13 THE COURT: She's getting to it. There we go.

03:07:05 14 THE WITNESS: Yes, I see it.

03:07:06 15 BY MS. GORMAN:

03:07:07 16 Q. Thank you.

03:07:07 17 And the subpoena was seeking, if we look in the first

03:07:11 18 paragraph, all police records, reports, notes, and street

03:07:14 19 files relating to R. D. F-151922, the homicide of Jerome Smith

03:07:22 20 and Talman Hickman. Do you see that?

03:07:24 21 A. Yes.

03:07:25 22 Q. And it was also seeking another RD number Y 322288; is

03:07:25 23 that correct?

03:07:32 24 A. That's correct.

03:07:33 25 Q. Can you explain to the jury what an RD number is?

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03:07:35 1 A. RD number is a number assigned to a case report generated
03:07:39 2 by the Chicago Police Department.

03:07:40 3 Q. And then the files are kept in that numerical order by
03:07:44 4 year?

03:07:44 5 A. Everything is referred to the RD number, correct.

03:07:47 6 Q. Okay. And F was for the year; is that correct?

03:07:49 7 A. That's correct.

03:07:50 8 Q. And so 1984, this was 1984 murder and that's why the
03:07:54 9 letter F was used?

03:07:56 10 A. If that was the date, yes, I don't recall the dates.

03:07:59 11 Q. And 1985 was G and et cetera.

03:08:04 12 The second request was for all reports, notes, or
03:08:08 13 street files relating to Earl Hawkins, Randy Langston, Eric
03:08:13 14 Langston, Gerald Morris, Anthony Sumner, witnesses in this
03:08:16 15 incident or defendant Nathson Fields, do you see that?

03:08:20 16 A. Yes.

03:08:20 17 Q. And then the third part of the request was for all letters
03:08:23 18 or other correspondence from or to Nathson Fields. Do you see
03:08:27 19 that?

03:08:27 20 A. Yes.

03:08:27 21 Q. And sometime in February of 2006, there was a complaint
03:08:38 22 from Ms. Snyder; isn't that correct?

03:08:42 23 A. I recall getting a phone call because I was given a fax
03:08:45 24 with my name on it, so I don't recall the phone conversation,
03:08:48 25 but I do remember receiving a fax with my name spelled

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03:08:54 1 incorrectly, but I was the only one close to that.

03:08:57 2 Q. So that came to your attention?

03:08:58 3 A. Correct.

03:08:59 4 Q. And Ms. Snyder was complaining because she had filed a

03:09:02 5 subpoena seeking all of these records and she was not getting

03:09:05 6 what she was looking for; is that correct ^ ?

03:09:08 7 A. I believe there is a problem with one of the reports.

03:09:12 8 Q. With one of the reports?

03:09:13 9 A. I don't recall which report, about you she had a problem

03:09:16 10 obtaining a report. I don't recall which one.

03:09:18 11 Q. She was having a problem -- she was having a problem

03:09:24 12 getting the documents that she was seeking; isn't that

03:09:24 13 correct?

03:09:29 14 A. She had a problem getting reports. I don't recall which

03:09:30 15 ones, though.

03:09:31 16 Q. Okay. What did you do when you got Ms. Snyder, attorney

03:09:35 17 Snyder's complaint?

03:09:37 18 A. She sent me a fax and then when I received the fax, I gave

03:09:40 19 it to my subpoena unit supervisor and told her to take care of

03:09:45 20 it.

03:09:45 21 Q. Did you try to locate the file?

03:09:47 22 A. Myself, no.

03:09:47 23 Q. Okay. Did you do any follow up to see if the file was

03:09:50 24 ever found for her?

03:09:51 25 A. No.

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03:09:51 1 Q. Why not?

03:09:54 2 A. Well, because I gave it to my supervisor and she was a
03:10:01 3 good person and she handles all the jobs and I didn't hear
03:10:04 4 back from Ms. Snyder, so I assumed it was completed.

03:10:06 5 Q. You have no recollection of being able to find the file
03:10:08 6 that Ms. Snyder was complaining about, do you?

03:10:11 7 A. No, I didn't look for the file myself.

03:10:13 8 Q. You have no recollection about producing anything to Ms.
03:10:17 9 Snyder in response to the subpoena, do you?

03:10:19 10 A. No, I didn't produce anything myself.

03:10:21 11 Q. Do you have any independent recollection of your
03:10:28 12 correspondence and phone calls with Ms. Snyder?

03:10:31 13 A. No, just if it was addressed to me, so I must have told
03:10:37 14 her just to fax what she needed directly to me and I would
03:10:40 15 hand it to the subpoena unit.

03:10:41 16 Q. You know from the records in your division that the
03:10:44 17 subpoena came through at that time; isn't that correct?

03:10:47 18 A. What I heard -- I don't get every subpoena that came to
03:10:50 19 the records division, so I wouldn't know that a particular
03:10:54 20 subpoena came that day unless there is a problem with the
03:10:56 21 civilian supervisor that they would contact me.

03:10:59 22 THE COURT: Ms. Gorman, you need to find a good spot
03:11:03 23 to take a pause. If you want to finish this sub topic, we
03:11:07 24 will do that. I believe the other witness is here.

03:11:10 25 MS. GORMAN: Thank you.

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03:11:11 1 BY MS. GORMAN:

03:11:12 2 Q. Lieutenant Melean, in 2006, your division had a computer
03:11:16 3 system isn't that correct for keeping track of the records of
03:11:19 4 subpoenas?

03:11:20 5 A. Yes, it did.

03:11:21 6 Q. Did you look through that computer system to refresh your
03:11:26 7 recollection about the subpoena?

03:11:27 8 A. No, I never looked in the access database myself. That
03:11:32 9 was the subpoena unit's job.

03:11:34 10 Q. Did you try to look through that access base at the time?

03:11:36 11 A. No, I didn't have the access database on my computer in my
03:11:40 12 office.

03:11:40 13 Q. Do you know if the access database had 2006 files at that
03:11:44 14 time?

03:11:44 15 A. According to my previous testimony, I had asked database
03:11:52 16 supervisor if they could find the data that was stored and he
03:11:55 17 said he could not.

03:11:56 18 Q. And do you know why they could not?

03:11:57 19 A. No.

03:11:58 20 Q. Didn't they tell you that the records were -- that the
03:12:00 21 2006 records were lost?

03:12:02 22 A. He just said they couldn't find it, so I had no idea what
03:12:07 23 he meant by that.

03:12:10 24 MS. GORMAN: I think I should.

03:12:11 25 THE COURT: Yeah, okay.

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03:12:12 1 MS. GORMAN: Save this.

03:12:13 2 THE COURT: My apologies. We are going to need to
03:12:17 3 pause to get another witness. You can go back to the room
03:12:22 4 that you were in before.

03:12:25 5 MR. MICHALIK: Your Honor, if I could just explain to
03:12:27 6 him.

03:12:27 7 THE COURT: Yeah, explain it to him outside the room,
03:12:30 8 but explain it to him. Thanks.

03:13:06 9 (Witness sworn.)

03:13:16 10 THE COURT: Mr. Loevy, you can go ahead.

03:13:17 11 MR. LOEVY: Thank you, your Honor.

03:13:18 12 - - -

03:13:18 13 ERIC LANGSTON, DIRECT EXAMINATION

03:13:18 14 BY MR. LOEVY:

03:13:19 15 Q. Sir, could you state your name for the record.

03:13:20 16 A. Eric Langston.

03:13:23 17 Q. Where do you live, Mr. Langston?

03:13:25 18 A. 158 south ridge way.

03:13:28 19 THE COURT: All right. Now I am going to undo what I
03:13:31 20 just said. I don't want you all the way up on that
03:13:34 21 microphone. Here is some water. It looks like you have a
03:13:37 22 scratchy throat. If he gave an actual address, the address is
03:13:44 23 stricken. Just so the jury knows why we did that, as of the
03:13:48 24 last five years, we don't put actual addresses on the record
03:13:51 25 anymore. Just city and state.

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03:13:52 1 BY MR. LOEVY:

03:13:53 2 Q. Who do you live with?

03:13:54 3 A. What?

03:13:55 4 Q. Who do you live with?

03:13:56 5 A. My wife and kids.

03:13:58 6 Q. What do you do for a living?

03:13:59 7 A. I work.

03:14:00 8 Q. What's your job?

03:14:01 9 A. I work at an laundry company.

03:14:05 10 Q. Laundry company. What days of the work do you work, sir?

03:14:08 11 A. Tuesday through Friday.

03:14:09 12 Q. Was today a workday?

03:14:11 13 A. Yes.

03:14:11 14 Q. Was it an imposition on your schedule to have to be here?

03:14:15 15 A. Yes.

03:14:17 16 MR. NOLAND: Objection, relevance.

03:14:18 17 THE COURT: Overruled.

03:14:18 18 BY MR. LOEVY:

03:14:19 19 Q. You were subpoenaed to testify, correct, sir?

03:14:20 20 A. Yes.

03:14:21 21 Q. Do you want to be here?

03:14:22 22 A. No.

03:14:22 23 Q. Do you know Mr. Fields?

03:14:24 24 A. No, I don't.

03:14:25 25 Q. Have you ever met the man in your life?

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03:14:28 1 A. No.

03:14:28 2 Q. Are you receiving any kind of benefit or anything being

03:14:32 3 here good for you?

03:14:33 4 A. No.

03:14:33 5 Q. Do you wish this case would just go away?

03:14:35 6 A. Yes.

03:14:35 7 Q. All right. Turning your attention back to April 28th,

03:14:40 8 1984, that's the day that those men were murdered in your

03:14:43 9 building. Do you remember that, sir?

03:14:44 10 A. Yes.

03:14:44 11 Q. How old were you then?

03:14:46 12 A. Probably like 11.

03:14:49 13 Q. 11 you say is your memory?

03:14:50 14 A. Yes.

03:14:51 15 Q. All right. Where were you living at the time?

03:14:52 16 A. 706 East 39th Street.

03:14:56 17 Q. And who were you living with at the time?

03:14:58 18 A. My mama.

03:14:59 19 Q. And some of your other family too, do you remember?

03:15:04 20 A. My mama and the rest of my family.

03:15:05 21 Q. All right. Do you remember which apartment you lived in?

03:15:09 22 A. Yes.

03:15:09 23 Q. Which apartment was that?

03:15:10 24 A. Apartment number 106.

03:15:11 25 Q. All right. And I want to show you this building here.

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03:15:19 1 Was it -- was your apartment in the back of the building or
03:15:23 2 the front of the building?
03:15:24 3 A. It was in the back.
03:15:25 4 Q. All right. What drew your attention to the fact that
03:15:31 5 somebody had shot somebody that day?
03:15:32 6 A. I didn't know because I was already looking, I was looking
03:15:37 7 out the window.
03:15:37 8 Q. All right. Sir, did you hear gunshots?
03:15:40 9 A. Yes.
03:15:41 10 Q. Do you have an exact memory 30 years later about who was
03:15:45 11 running where, up down, sideways?
03:15:48 12 A. No.
03:15:48 13 Q. Were you outside at the time of the shooting?
03:15:50 14 A. No, I wasn't.
03:15:52 15 Q. When you heard gunshots, what did you do?
03:15:55 16 A. I looked out the window.
03:15:58 17 Q. What did you see?
03:15:59 18 A. I went out.
03:16:02 19 Q. Yeah?
03:16:02 20 A. I saw some car guy in a car with ski masks.
03:16:07 21 Q. Did you see guys running?
03:16:10 22 A. Later on I saw the guys with ski masks running.
03:16:14 23 Q. Did you ever see their faces?
03:16:16 24 A. No, I could not.
03:16:17 25 Q. Why didn't you see their faces?

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03:16:18 1 A. They had ski masks.

03:16:21 2 Q. Do you remember if they were going north, south, east,

03:16:24 3 west or right or left?

03:16:25 4 A. No.

03:16:25 5 Q. Did you ever interact with them face to face?

03:16:28 6 A. No.

03:16:28 7 Q. Did you ever see them without their masks?

03:16:30 8 A. No.

03:16:30 9 Q. At some point later, did you end up interacting with the

03:16:33 10 police?

03:16:34 11 A. Yes.

03:16:34 12 Q. Did you ever tell the police or anyone else that you could

03:16:36 13 identify people with masks, the people you've seen?

03:16:40 14 A. Yes.

03:16:40 15 Q. You told them?

03:16:41 16 A. No, that I said that I saw them with masks, but I couldn't

03:16:46 17 identify them.

03:16:46 18 Q. All right. Did you ever tell anybody any reason to

03:16:48 19 believe you could pick out who did that murder?

03:16:50 20 A. No.

03:16:50 21 Q. Did the police ask you to help them identify the murder?

03:16:57 22 A. Yes.

03:16:57 23 Q. What did you tell them?

03:16:58 24 A. I didn't know.

03:16:59 25 Q. What do you mean? What did you tell them?

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03:17:03 1 A. I said I didn't know who did it, they had masks on. I
03:17:06 2 couldn't see their faces.
03:17:07 3 Q. Did the police accept that answer?
03:17:09 4 A. No.
03:17:09 5 Q. Were you shown photographs?
03:17:10 6 A. Yes.
03:17:11 7 Q. What do you recall about that? Were you able to pick out
03:17:15 8 any photographs?
03:17:17 9 MR. KULWIN: Objection, Judge, multiple questions.
03:17:19 10 THE COURT: I'm sorry.
03:17:20 11 MR. KULWIN: Multiple questions. He had one pending
03:17:23 12 and started another one.
03:17:24 13 MR. LOEVY: I did, your Honor.
03:17:25 14 THE COURT: Ask one.
03:17:28 15 BY MR. LOEVY:
03:17:28 16 Q. Were you able to pick out any people from the photographs?
03:17:30 17 A. No.
03:17:30 18 Q. Why not?
03:17:30 19 A. Because I didn't know who it was.
03:17:33 20 Q. All right. Showing you a copy of Plaintiff's Exhibit
03:17:40 21 8628, this is in evidence.
03:17:42 22 THE COURT: 86-28 I assume?
03:17:45 23 MR. LOEVY: Yes, your Honor.
03:17:46 24 BY MR. LOEVY:
03:17:46 25 Q. This is a police report dated June 17th, 1985?

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03:17:53 1 MR. LOEVY: Your Honor, the ELMO.

03:17:54 2 THE COURT: You will be able to see this on your

03:17:56 3 screen there.

03:17:57 4 BY MR. LOEVY:

03:17:57 5 Q. That's your name, Eric Langston, right?

03:17:59 6 A. Yes.

03:17:59 7 Q. Showing you the second page, and this is a report create

03:18:02 8 the by Detective O'Callaghan on the 17th of June 1985. I

03:18:07 9 would like to read you this sentence. Eric Langston viewed

03:18:10 10 the lineup and positively identified the subject Nathson

03:18:13 11 Fields as one of the subjects who shot the victims. Do you

03:18:16 12 see that?

03:18:16 13 A. Yes.

03:18:16 14 Q. Are you able to identify anybody as the one who shot the

03:18:20 15 victims?

03:18:21 16 A. No.

03:18:21 17 Q. Did you see the shooting?

03:18:22 18 A. No.

03:18:22 19 Q. Did you ever tell the police that you identified Nathson

03:18:27 20 Fields as the one who saw that shot the victims?

03:18:30 21 A. No.

03:18:31 22 Q. Do you remember if the police seemed interested in

03:18:36 23 particular suspects?

03:18:38 24 A. I don't recall.

03:18:40 25 Q. You don't recall how it went down?

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03:18:42 1 A. No.

03:18:42 2 Q. All right. Did they come try to get you to testify?

03:18:45 3 A. Yes.

03:18:46 4 Q. And what did you tell them when it came time to go to

03:18:50 5 court?

03:18:50 6 A. That I didn't want to go to court.

03:18:52 7 Q. Why did you tell them you didn't want to go to court?

03:18:54 8 A. Because I didn't know who did it.

03:18:55 9 Q. Did you explain to the adults, you were a kid then still?

03:18:58 10 A. Yes.

03:18:58 11 Q. Although a couple years later?

03:19:00 12 A. Yes.

03:19:00 13 Q. Did you explain to the adults that you didn't want to go

03:19:03 14 to court because you didn't know who committed the murder?

03:19:06 15 A. Yes.

03:19:06 16 Q. Were they accepting that for an answer?

03:19:08 17 A. No, they was not.

03:19:09 18 Q. Were you -- were you scared?

03:19:12 19 A. Very.

03:19:12 20 Q. Was it scary to have to go to court, point your finger and

03:19:17 21 somebody and say they committed a murder if you didn't in fact

03:19:20 22 know they committed a murder?

03:19:21 23 A. Yes.

03:19:21 24 MR. KULWIN: Judge, I am going to object.

03:19:22 25 THE COURT: The objection is overruled.

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03:19:23 1 BY MR. LOEVY:

03:19:24 2 Q. Did it scare the heck out of you?

03:19:29 3 A. Yes.

03:19:29 4 Q. Did you go to court?

03:19:30 5 A. Yes.

03:19:31 6 Q. Did you ever have to testify at a trial about whether or
03:19:33 7 not you saw Mr. Fields?

03:19:34 8 A. Yes.

03:19:34 9 Q. In fact, that was at the sentencing after he had been
03:19:37 10 convicted, right?

03:19:37 11 A. Yes.

03:19:37 12 Q. Did you tell the truth?

03:19:39 13 A. Yes.

03:19:39 14 Q. And the truth was you never saw anybody without masks?

03:19:43 15 A. No.

03:19:44 16 Q. All right, do you remember being steered toward any
03:20:00 17 particular suspects?

03:20:02 18 MR. KULWIN: Judge, I am going to object. Asked and
03:20:03 19 answered.

03:20:03 20 THE COURT: Overruled.

03:20:08 21 BY MR. LOEVY:

03:20:08 22 Q. Do you remember, sir?

03:20:09 23 A. What was that?

03:20:10 24 Q. Do you remember if the police were trying to steer you to
03:20:12 25 any particular suspects?

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03:20:14 1 A. No.

03:20:15 2 Q. All right. Do you remember being asked these questions at
03:20:18 3 a prior hearing in this case in 2004?

03:20:22 4 MR. KULWIN: Page, please?

03:20:23 5 MR. LOEVY: This is page 2596, lines 7 through 18.

03:20:28 6 BY MR. LOEVY:

03:20:29 7 Q.

03:20:29 8 "QUESTION: I'm going to show you a picture of the
03:20:31 9 lineup. First I'm going to ask you what happened during the
03:20:34 10 lineup. Do you remember?

03:20:35 11 "ANSWER: They were trying to get me to pick out who
03:20:38 12 did it and I couldn't tell them who did it because the person
03:20:40 13 who did it had a ski mask on

03:20:42 14 THE COURT: I am going to make a suggestion. First
03:20:44 15 of all, no human being can understand what you're saying
03:20:47 16 because you are saying it too quickly. I am going to turn off
03:20:51 17 the jury's monitor, he will be able to see it.

03:20:57 18 BY MR. LOEVY:

03:20:58 19 Q. Mr. Langston?

03:21:00 20 MR. NOLAND: Your Honor, I am going to object. Is it
03:21:05 21 to --

03:21:06 22 THE COURT: Overruled. There is no question pending
03:21:08 23 at this second.

03:21:09 24 BY MR. LOEVY:

03:21:10 25 Q. Can he sue it?

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03:21:10 1 A. Yes.

03:21:10 2 Q. Isn't it true on a prior occasion in 2014, you were asked
03:21:14 3 questions, correct?

03:21:15 4 A. Yes.

03:21:15 5 Q. And isn't it true that your answer when asked what
03:21:19 6 happened during the lineup, do you remember, was they were
03:21:22 7 trying to get me to pick out who did it and I couldn't tell
03:21:25 8 them who did it because the person I thought did it had a ski
03:21:29 9 mask on. So he kind of like coerced me.

03:21:32 10 "QUESTION: Did Detective O'Callaghan say anything to
03:21:34 11 you before you went into the lineup?

03:21:35 12 "ANSWER: Yes.

03:21:36 13 "QUESTION: What did he say to you?

03:21:37 14 "ANSWER: He was telling me the guy they wanted to get,
03:21:41 15 and I guess that guy was Mr. Fields."

03:21:45 16 Did you give those answers, sir

03:21:46 17 A. Yes.

03:21:46 18 Q. Is that consistent with your recollection?

03:21:48 19 A. Yes.

03:21:48 20 Q. Would you have been able to make an identification without
03:21:50 21 help from the police about who you were supposed to pick?

03:21:53 22 A. No.

03:21:53 23 Q. Did anybody ever threaten in any way in connection with
03:21:58 24 anything having to do with this case, sir?

03:22:00 25 A. No.

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03:22:00 1 Q. Did you ever have any contact with any gang members about
03:22:06 2 whether you were or weren't going to testify?

03:22:08 3 A. No.

03:22:08 4 Q. Was this a memory from your childhood, this court case,
03:22:16 5 keep coming back?

03:22:17 6 A. Yes.

03:22:18 7 Q. All right. Is it a pleasant memory?

03:22:20 8 A. No.

03:22:21 9 MR. LOEVY: I have no further questions, your Honor.

03:22:23 10 THE COURT: Mr. Kulwin.

03:22:25 11 MR. KULWIN: Thank you, your Honor.

03:22:27 12 - - -

03:22:27 13 ERIC LANGSTON, CROSS-EXAMINATION

03:22:27 14 BY MR. KULWIN:

03:22:44 15 Q. Mr. Langston, originally police detectives came to see you
03:22:52 16 -- were on the scene right after the murders. Do you remember
03:22:55 17 that back in 1984? There were a bunch of policemen
03:22:58 18 investigating?

03:22:59 19 A. No.

03:23:04 20 Q. After the people got shot and killed in 1984, did police
03:23:08 21 come to the building to investigate?

03:23:09 22 A. Yes.

03:23:10 23 Q. Okay. In 1984, you weren't in your apartment -- well, let
03:23:22 24 me take that back.

03:23:23 25 Is the apartment you lived in one floor or two

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03:23:26 1 floors, the apartment you actually lived in?

03:23:27 2 A. It had a first and second floor.

03:23:30 3 Q. The apartment did?

03:23:31 4 A. Yes.

03:23:31 5 Q. All right. So when you heard the shots, you ran upstairs?

03:23:36 6 A. No, I was already upstairs.

03:23:38 7 Q. Let me just see. I know it's a long time ago.

03:23:47 8 Let me refresh your recollection?

03:23:52 9 THE COURT: Never mind.

03:23:54 10 MR. KULWIN: What?

03:23:55 11 THE COURT: Never mind.

03:23:56 12 BY MR. KULWIN:

03:24:03 13 Q. This is your testimony, Mr. Langston, from the sentencing

03:24:06 14 hearing a long time ago.

03:24:13 15 THE COURT: You don't get to talk up there. Just so

03:24:19 16 you know, you can put that on the screen if you want and he'll

03:24:22 17 be able to see it. The jurors are not turned on.

03:24:24 18 MR. KULWIN: I didn't realize that, Judge. I

03:24:26 19 apologize.

03:24:27 20 BY MR. KULWIN:

03:24:28 21 Q. Does that refresh your recollection, Mr. Langston?

03:24:31 22 A. Yes.

03:24:31 23 Q. That you went upstairs after you heard the gunshots?

03:24:34 24 A. Yes.

03:24:34 25 Q. Now, you saw when you looked out the window a blue

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03:24:44 1 Cadillac, remember?

03:24:46 2 A. No.

03:24:48 3 Q. You don't remember?

03:24:49 4 A. No.

03:24:50 5 Q. Okay. Judge, I am going to put this up and we will look
03:25:02 6 at it.

03:25:03 7 THE COURT: Sure.

03:25:03 8 BY MR. KULWIN:

03:25:05 9 Q. This is another page from your sentencing hearing
03:25:08 10 testimony many years ago. You could look at the question line
03:25:13 11 16. Do you see that?

03:25:13 12 A. Yes.

03:25:13 13 Q. Okay. Does that refresh your recollection that you when
03:25:17 14 you looked out the window, you saw a blue Cadillac?

03:25:20 15 A. No.

03:25:20 16 Q. I am going to leave it up, Judge, if the jury can see it?

03:25:28 17 THE COURT: No, but if you are asking for them to.

03:25:31 18 MR. KULWIN: Yes.

03:25:32 19 MR. LOEVY: We object.

03:25:32 20 THE COURT: The reason I overruled the other
03:25:34 21 objection by Mr. Kulwin and the reason I am overruling this
03:25:36 22 one is Rule 801(d) 1-A, so I am going to put it up so the jury
03:25:42 23 can see it. Just one second. All right. There you go.

03:25:48 24 BY MR. KULWIN:

03:25:50 25 Q. Mr. Langston, do you remember being asked these questions

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03:25:52 1 under oath at the sentencing hearing.

03:25:53 2 "QUESTION: At first I was looking in a playground and
03:25:57 3 then I saw two men running.

03:25:59 4 "QUESTION: The two men that you saw run, where did
03:26:01 5 they run to?

03:26:02 6 "ANSWER: A blue Cadillac

03:26:04 7 "QUESTION: Where was this Cadillac parked?

03:26:08 8 "ANSWER: On Langley."

03:26:10 9 Do you remember that testimony?

03:26:11 10 A. No.

03:26:12 11 Q. That was a long time ago, a year after the murder occurred
03:26:14 12 when your memory of it was a lot fresher than it is today,
03:26:19 13 right?

03:26:19 14 A. Okay.

03:26:21 15 Q. And then I think I heard you say, then you saw the two men
03:26:37 16 after you saw them running from the Cadillac, you saw them
03:26:40 17 running back to the Cadillac?

03:26:41 18 A. Yes.

03:26:42 19 Q. Here's my question for you, Mr. Langston. You were 10, 11
03:26:51 20 years old at the time?

03:26:51 21 A. Yes.

03:26:52 22 Q. And all of a sudden you hear gunshots, right?

03:26:55 23 A. Yes.

03:26:55 24 Q. Okay. And then you run upstairs to look out the window,
03:26:59 25 right?

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03:26:59 1 A. Yes.

03:26:59 2 Q. And so you saw the men running to the car after the
03:27:06 3 gunshots, right?

03:27:07 4 A. Yes.

03:27:08 5 Q. You couldn't have seen them running from the car before
03:27:10 6 the gunshots, right?

03:27:11 7 A. No.

03:27:12 8 Q. Isn't that right?

03:27:13 9 A. No.

03:27:13 10 Q. That is right?

03:27:14 11 A. That is right.

03:27:16 12 Q. There you go.

03:27:17 13 Now, when you were looking at the men as they ran to
03:27:23 14 the blue Cadillac, you could see how big they were, right?

03:27:28 15 A. No.

03:27:28 16 Q. You couldn't see -- like one man was tall and one man was
03:27:34 17 short?

03:27:34 18 A. No.

03:27:35 19 Q. You saw?

03:28:16 20 MR. KULWIN: Can I have one second, Judge? I
03:28:18 21 apologize. I lost my place.

03:28:20 22 (Brief pause.)

03:29:02 23 MR. KULWIN:

03:29:02 24 Q. Now, when you were looking out your window, at one point
03:29:05 25 after the man ran to the car, you saw them take their ski

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03:29:09 1 masks off, didn't you?

03:29:11 2 A. No.

03:29:11 3 Q. Let's go back to your testimony from the trial 30 plus
03:29:17 4 years ago under oath, the sentencing hearing under oath, page
03:29:23 5 1217. Here was the question, sir.

03:29:29 6 MR. KULWIN: So the jury can see it, Judge.

03:29:38 7 BY MR. KULWIN:

03:29:39 8 Q. When the two men got into the car, did they take their ski
03:29:42 9 masks off?

03:29:43 10 "ANSWER: Yes. Do you remember that

03:29:45 11 A. Yes.

03:29:45 12 Q. That's what happened, isn't it?

03:29:47 13 A. Yes.

03:29:47 14 Q. Now, when the police came in 1984, you didn't talk to
03:30:09 15 them, you didn't talk to any police right after the murders
03:30:11 16 occurred, right?

03:30:12 17 A. No.

03:30:12 18 Q. And as you said just a moment ago, it was a pretty scary
03:30:20 19 event, you didn't want to talk to them?

03:30:22 20 A. No.

03:30:22 21 Q. You didn't want to be involved at all with it?

03:30:24 22 A. No, I did not.

03:30:25 23 Q. And you certainly didn't want to testify at any trials,
03:30:28 24 that's for sure, right?

03:30:29 25 A. Right.

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03:30:30 1 Q. But a year after the shootings, a year later, another
03:30:37 2 detective, another couple detectives came to see you. Do you
03:30:40 3 remember that at your home?
03:30:42 4 A. No.
03:30:44 5 Q. You don't remember that?
03:30:46 6 A. No.
03:30:46 7 Q. Was it a Detective O'Callaghan and a submit /AOE came to
03:30:52 8 your house and talked to your brother at the time?
03:30:54 9 A. I remember O'Callaghan.
03:30:55 10 Q. Okay. And he -- and he asked you at some point if you
03:31:09 11 would come down and see a lineup, right?
03:31:11 12 A. Yes.
03:31:11 13 Q. And you told him before he asked you that what you had
03:31:16 14 seen that day, right?
03:31:17 15 A. Yes.
03:31:17 16 Q. All right. The men had run to the car with masks?
03:31:21 17 A. Ski masks on.
03:31:23 18 Q. And they took their masks off and got in the car?
03:31:28 19 A. Right.
03:31:28 20 Q. And so -- and you felt comfortable enough to talk to him
03:31:33 21 and go down with him to look at these line ups, right?
03:31:36 22 A. Right.
03:31:36 23 Q. Yeah.
03:31:37 24 Now, when you looked -- and you looked at a lineup
03:31:49 25 with Mr. Fields in it. Now you know his name is Mr. Fields.

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03:31:52 1 You looked at a lineup with some guys in it, right?

03:31:57 2 A. Right.

03:31:57 3 Q. And Mr. Fields was one of them?

03:31:58 4 A. Right.

03:31:59 5 Q. And Mr. O'Callaghan was with you in the viewing room,
03:32:01 6 right?

03:32:02 7 A. Yes.

03:32:03 8 Q. And then after you got done looking, he asked you who you
03:32:09 9 saw and you pointed him out, right?

03:32:12 10 A. Yes.

03:32:12 11 Q. Now, after that happened, about a month later your family
03:32:29 12 moved from the 706 building to Sawyer street. Do you remember
03:32:35 13 that?

03:32:35 14 A. Yes.

03:32:35 15 Q. 1533 --

03:32:38 16 THE COURT: Old dresses are not a problem.

03:32:40 17 BY MR. KULWIN:

03:32:41 18 Q. 1533 Sawyer, do you remember that?

03:32:44 19 A. Yes.

03:32:44 20 Q. And a couple of folks came to see you and wanted to talk
03:32:48 21 to you about what happened while you were living there. Do
03:32:51 22 you recall that?

03:32:51 23 A. Yes.

03:32:52 24 Q. And they said, one guy said he was a state's attorney and
03:32:55 25 the other guy said he was with the police. Do you recall

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03:32:57 1 that?

03:32:57 2 A. Yes.

03:32:57 3 Q. And they took you and your brother out to the ball field?

03:33:05 4 A. Yes.

03:33:06 5 Q. You recall that, right.

03:33:08 6 And later you found out that going to wasn't a
03:33:11 7 state's attorney and the other guy wasn't a policeman, they
03:33:15 8 were Mr. Swano and some other guy?

03:33:16 9 MR. LOEVY: Objection, leading, your Honor.

03:33:17 10 THE COURT: Overruled.

03:33:18 11 BY MR. KULWIN:

03:33:19 12 Q. Right?

03:33:20 13 A. Yes.

03:33:20 14 Q. And it was Bill Swano who put you on the stand at the
03:33:31 15 sentencing hearing when you testified, right, when you were
03:33:35 16 about 11?

03:33:36 17 A. Yes.

03:33:36 18 Q. And a number of years later when you were in your early
03:33:49 19 20s, 1999, you had occasion to talk to a guy named Dave
03:33:55 20 Kelley, assistant state's attorney Dave Kelley. Do you
03:33:58 21 remember that?

03:33:58 22 A. Yes.

03:33:58 23 Q. He asked you, Mr. Langston, how come after identifying Mr.
03:34:03 24 Fields you testified at the sentencing hear. Do you remember
03:34:04 25 him asking you that?

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03:34:05 1 A. No.

03:34:07 2 Q. Okay. And didn't you tell Mr. Kelley at that time because
03:34:12 3 the El Rukns scared the shit out of me?

03:34:14 4 A. No.

03:34:15 5 Q. You don't remember that?

03:34:16 6 A. No.

03:34:16 7 Q. Okay. Well, you testified in a prior proceeding in this
03:34:23 8 case.

03:34:28 9 MR. KULWIN: Page 2604, line 18.

03:34:33 10 BY MR. KULWIN:

03:34:35 11 Q. There was another proceeding in this case that you
03:34:36 12 testified to, right?

03:34:37 13 A. What was that?

03:34:38 14 Q. There was another --

03:34:39 15 THE COURT: You've been here before, right.

03:34:41 16 THE WITNESS: Yes.

03:34:44 17 BY MR. KULWIN:

03:34:44 18 Q. And you didn't want to be --

03:34:46 19 MR. LOEVY: Objection, your Honor. This isn't proper
03:34:47 20 impeachment.

03:34:48 21 THE COURT: Can I see it, please? Can somebody just
03:34:51 22 hand it to me.

03:34:53 23 MR. KULWIN: Sure.

03:34:54 24 THE COURT: What page am I looking at?

03:34:57 25 MR. KULWIN: 2604.

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03:34:58 1 THE COURT: Thank you very much.

03:35:06 2 The objection is overruled.

03:35:11 3 MR. KULWIN: Am I allowed to put this up on the
03:35:13 4 screen, Judge, or no?

03:35:15 5 THE COURT: Yes, same Rule 801(d) 1-A.

03:35:23 6 BY MR. KULWIN:

03:35:23 7 Q. This was back in 2014. Do you remember being asked these
03:35:29 8 questions in 2014 and isn't it in fact true that in 1999, ten
03:35:35 9 years later, you talked to assistant state's attorney by the
03:35:39 10 name of David Kelley isn't that right that, about this case?
03:35:43 11 True. And isn't it true that you told Kelly that the
03:35:46 12 testimony you gave in August 1986 when Mr. Goodman showed it
03:35:50 13 to you, in fact, you gave it because they scared the shit out
03:35:53 14 of you, the El Rukns, and you answered, true, right? That's
03:36:03 15 what you said, right?

03:36:04 16 A. Yes.

03:36:05 17 Q. Now, at the time you testified at the sentencing hearing,
03:36:35 18 Mr. Langston, you were still living at the 706 building where
03:36:39 19 the murders had occurred, right?

03:36:41 20 A. Yes.

03:36:41 21 Q. And the 706 building was about a block away from the El
03:36:52 22 Rukn Fort, right?

03:36:53 23 A. Yes.

03:36:54 24 Q. And when you went to that sentencing hearing, your brother
03:37:00 25 Larry brought you down to that court hearing, correct, your

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03:37:04 1 brother Larry, do you remember that?

03:37:06 2 A. No.

03:37:08 3 Q. And he had just gotten out of the penitentiary, do you
03:37:12 4 recall?

03:37:12 5 A. Yes.

03:37:12 6 Q. Okay. Let me see if I can show you something.

03:37:16 7 THE COURT: On this one you are refreshing his
03:37:19 8 recollection, so I am going to take that down the screen. You
03:37:22 9 can still do it on his screen.

03:37:24 10 BY MR. KULWIN:

03:37:25 11 Q. Can you see it on your screen?

03:37:27 12 THE COURT: You have to put it up there. It's pretty
03:37:29 13 hard to see it.

03:37:30 14 MR. KULWIN: That would be difficult. That would be
03:37:32 15 a miracle.

03:37:38 16 THE COURT: I have turned off the jury's screen, so
03:37:41 17 you can still do it on the ELMO.

03:38:45 18 BY MR. KULWIN:

03:38:45 19 Q. I am going to show you if I can the testimony again from
03:38:48 20 your examination when you were in this proceeding in this
03:38:51 21 court. Why don't you look at this for a second and I'll move
03:38:58 22 it up.

03:39:07 23 THE COURT: It's that one that's at line 14 there.

03:39:10 24 MR. KULWIN: Yeah.

03:39:10 25 THE COURT: Look at that. The question is does that

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03:39:13 1 refresh your recollection about how you got to court?

03:39:15 2 THE WITNESS: Yes.

03:39:16 3 BY MR. KULWIN:

03:39:17 4 Q. It does, right?

03:39:20 5 A. Yes.

03:39:20 6 Q. Your brother Larry brought you?

03:39:23 7 A. Yes.

03:39:23 8 Q. And Larry had just gotten out of the penitentiary a couple
03:39:26 9 months earlier, right?

03:39:27 10 A. Yes.

03:39:27 11 Q. And when you were looking out the window at the blue
03:40:06 12 Cadillac, you were about a hundred feet away?

03:40:10 13 MR. LOEVY: Objection, your Honor, no foundation,
03:40:15 14 memory of the Cadillac.

03:40:17 15 THE COURT: Overruled.

03:40:18 16 THE WITNESS: What was that?

03:40:18 17 BY MR. KULWIN:

03:40:20 18 Q. I'm sorry.

03:40:20 19 So the shooting takes place, you run upstairs, you
03:40:24 20 look out the window, the Cadillac where the men got into the
03:40:27 21 car was about a hundred feet away?

03:40:30 22 A. Probably a little farther.

03:40:34 23 THE COURT: Probably a little farther is what he
03:40:37 24 said.

03:40:37 25 BY MR. KULWIN:

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03:40:38 1 Q. Let me go back to this and see if this helps you out?

03:40:41 2 THE COURT: You are not refreshing his recollection

03:40:44 3 because he didn't -- you can do it --

03:40:47 4 MR. KULWIN: Impeachment.

03:40:48 5 THE COURT: I can't tell you what to do. I am going

03:40:52 6 to tell you what you can do.

03:41:00 7 BY MR. KULWIN:

03:41:01 8 Q. Going back to that hearing you testified to before, that

03:41:04 9 prior hearing, do you remember?

03:41:05 10 MR. LOEVY: Can we get the date on that, your Honor?

03:41:07 11 MR. KULWIN: Yes.

03:41:07 12 THE COURT: Not the date, just the page number.

03:41:09 13 MR. KULWIN: You mean the page or the date.

03:41:11 14 THE COURT: He wants the page number.

03:41:13 15 MR. KULWIN: Page 2593.

03:41:14 16 THE COURT: The page is all we need.

03:41:16 17 MR. KULWIN: Okay.

03:41:16 18 BY MR. KULWIN:

03:41:22 19 Q. How far away was that -- line 22. How far away was that

03:41:26 20 car from you? Probably like a hundred feet. Do you remember

03:41:29 21 that question and answer?

03:41:30 22 A. No.

03:41:32 23 Q. Okay. In any event, so it was about -- there was a ball

03:41:37 24 field across the yard from where you lived, right?

03:41:40 25 A. Yes.

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03:41:40 1 Q. You played on that field, right?

03:41:41 2 A. Yes.

03:41:42 3 Q. Played baseball?

03:41:43 4 A. Yes.

03:41:43 5 Q. So it was about the distance from home plate to a little
03:41:47 6 bit past first base?

03:41:49 7 A. A few feet further than that.

03:41:52 8 Q. A few feet further?

03:41:56 9 MR. KULWIN: If I may have a moment, Judge. I don't
03:42:15 10 have anything else, Judge.

03:42:17 11 MR. MICHALIK: No questions, your Honor.

03:42:18 12 THE COURT: Redirect?

03:42:19 13 MR. LOEVY: Yes, your Honor.

03:42:19 14 - - -

03:42:19 15 ERIC LANGSTON, REDIRECT EXAMINATION

03:42:19 16 BY MR. LOEVY:

03:42:30 17 Q. All right. Sir, you were asked questions about your
03:42:33 18 testimony at the sentencing. That was quite a bit of time
03:42:36 19 ago, correct?

03:42:36 20 A. Yes.

03:42:36 21 Q. Your memory was firmer back then than it is now?

03:42:44 22 A. Yes.

03:42:44 23 Q. I am going to show you from the same hearing your
03:42:46 24 testimony at page 1223. Did you give this testimony. Do you
03:42:54 25 recognize the person that you picked out of the lineup as

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03:42:57 1 somebody you saw that night?

03:42:58 2 THE COURT: Hang on. Given the way you are doing
03:43:02 3 this, the jury is entitled to see it. It's not just
03:43:05 4 refreshing. Now it's up there.

03:43:06 5 BY MR. LOEVY:

03:43:07 6 Q. Did you recognize the person that you picked out of the
03:43:08 7 lineup as somebody you saw that night -- I'm sorry.

03:43:14 8 THE COURT: You got the wrong next page there.

03:43:16 9 MR. LOEVY: Yes.

03:43:17 10 THE COURT: I don't think you would have given the
03:43:19 11 answer five to that question.

03:43:20 12 MR. LOEVY: Thank you.

03:43:22 13 BY MR. LOEVY:

03:43:28 14 Q. Not the night, the morning. Shooting?

03:43:30 15 "ANSWER: No.

03:43:31 16 "QUESTION: Did somebody tell you who to pick out?

03:43:33 17 "ANSWER: Yes

03:43:34 18 "QUESTION: Who did?

03:43:35 19 "ANSWER: O'Callaghan."

03:43:37 20 Do you remember that testimony?

03:43:38 21 A. Yes.

03:43:39 22 Q. Would you have been able to pick out without help from the
03:43:42 23 police officers?

03:43:42 24 A. No.

03:43:42 25 Q. Now, Mr. Kulwin showed you a question and answer about

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03:43:45 1 seeing the guys in the car without their ski masks. Do you
03:43:48 2 remember him asking you those questions?

03:43:49 3 A. Yes.

03:43:49 4 Q. Okay. Showing you the same page but backing up, this is
03:43:52 5 page 1317,

03:43:55 6 MR. KULWIN: I'm sorry, what page?

03:43:56 7 MR. LOEVY: 1317.

03:43:57 8 BY MR. LOEVY:

03:43:58 9 Q. The questions he asked you are here at lines 17 through 19
03:44:02 10 when the men got into their car, did they take their masks
03:44:06 11 off.

03:44:07 12 When the men turned around and looked when they got
03:44:09 13 in the car with the ski masks still on?

03:44:11 14 "ANSWER: Yes.

03:44:12 15 "QUESTION: Could you tell if there was anybody in the
03:44:14 16 car?

03:44:15 17 "ANSWER: Yes.

03:44:16 18 "QUESTION: How many people could you see in the car?

03:44:18 19 "ANSWER: Three

03:44:19 20 "QUESTION: Do you remember anything or see the faces
03:44:21 21 of the people that were in the car from your window looking
03:44:23 22 across the playground from the car on Langley?

03:44:27 23 "ANSWER: No.

03:44:28 24 "QUESTION: When the two men got into the car, did they
03:44:31 25 take the ski masks off? That's the answer you gave. From

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03:44:34 1 where you were situated looking across the play lot from the
03:44:38 2 car on Langley, could you see their faces once they got in the
03:44:41 3 car?

03:44:42 4 "ANSWER: No."

03:44:43 5 Is that the full context of your testimony

03:44:45 6 A. Yes.

03:44:46 7 MR. KULWIN: Judge, I am going to object to the
03:44:47 8 phrase full context.

03:44:48 9 THE COURT: Overruled. The answer can stand. He
03:44:51 10 said yes.

03:44:52 11 BY MR. LOEVY:

03:44:52 12 Q. You were not making these identifications the day after
03:44:55 13 the shooting, were you?

03:44:56 14 A. No.

03:44:56 15 Q. At least a year went by?

03:44:58 16 A. Yes.

03:44:58 17 Q. You were asked some questions about whether it scared the
03:45:01 18 heck out of you to give these identifications.

03:45:03 19 Was it scary to you, did it scare the S out of you to
03:45:07 20 go to court, point your finger at somebody that you didn't
03:45:09 21 know?

03:45:09 22 A. Didn't know, right. Yes.

03:45:11 23 Q. Did any El Rukns contact you ever?

03:45:13 24 A. No.

03:45:13 25 Q. Did you ever receive any threat at all?

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03:45:16 1 A. No.

03:45:16 2 Q. Did anybody ever bother you about this except white guys

03:45:21 3 with suits and ties?

03:45:23 4 A. No.

03:45:23 5 Q. Now, Mr. Kulwin started asking you questions about

03:45:29 6 Mr. Swano and the state's attorney and the ball field. Do you

03:45:32 7 remember those questions he was asking you?

03:45:33 8 A. Yes.

03:45:33 9 Q. You said yes to everyone of those questions?

03:45:36 10 A. Yes.

03:45:36 11 Q. Who is Mr. Swano?

03:45:37 12 A. He was a detective.

03:45:38 13 Q. He was a what?

03:45:39 14 A. I think he was a detective.

03:45:41 15 Q. You have no idea who Mr. Swano?

03:45:42 16 A. No.

03:45:43 17 Q. Why did you say yes to his questions?

03:45:45 18 MR. KULWIN: Judge, I am going to object.

03:45:46 19 THE COURT: Sustained. You can argue it.

03:45:49 20 BY MR. LOEVY:

03:45:50 21 Q. He is an attorney, all right, sir, did you know that?

03:45:52 22 A. No.

03:45:52 23 Q. All right. Are you someone who sometimes says yes if you

03:45:55 24 are not sure?

03:45:56 25 A. No.

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03:45:56 1 Q. All right. You got me there.

03:46:04 2 MR. LOEVY: I have no further questions.

03:46:06 3 MR. KULWIN: Just a few.

03:46:08 4 THE COURT: Mr. Kulwin, anything else?

03:46:09 5 MR. KULWIN: Sorry, I do.

03:46:12 6 - - -

03:46:12 7 ERIC LANGSTON, RECROSS-EXAMINATION

03:46:12 8 BY MR. KULWIN:

03:46:18 9 Q. Mr. Langston, Mr. Loevy just read you a bunch of testimony

03:46:21 10 from that sentencing hearing, right?

03:46:23 11 A. Yes.

03:46:23 12 Q. That's the sentencing hearing that you told assistant

03:46:28 13 state's attorney Kelly you gave that testimony because the El

03:46:31 14 Rukns scared the shit out of you remember?

03:46:33 15 MR. LOEVY: Objection.

03:46:34 16 THE COURT: What's the objection?

03:46:34 17 MR. LOEVY: He said we just saw that. It's improper

03:46:37 18 impeachment. It's the same point.

03:46:39 19 THE COURT: Sustained. It's repeating the cross.

03:46:42 20 MR. KULWIN: Okay.

03:46:42 21 BY MR. KULWIN:

03:46:44 22 Q. He also asked you?

03:47:09 23 THE COURT: We will be taking a break. I want to

03:47:11 24 finish this witness before we do.

03:47:13 25 MR. KULWIN: I just have a couple questions if I can

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03:47:15 1 find the point. You apologize, Judge.

03:47:58 2 (Brief pause.)

03:48:35 3 BY MR. KULWIN:

03:48:47 4 Q. You were asked some questions about whether or not you
03:48:51 5 knew who Mr. Swano was. Do you remember that?

03:48:54 6 A. Yes.

03:48:54 7 Q. But before you testified here you said you had no idea who
03:49:14 8 he was, is that your testimony?

03:49:18 9 A. Yes.

03:49:18 10 Q. In a prior proceeding in this case, didn't you tell?

03:49:26 11 MR. LOEVY: Page?

03:49:27 12 MR. KULWIN: Page 2601.

03:49:35 13 BY MR. KULWIN:

03:49:35 14 Q. In a prior proceeding, you were asked some questions by
03:49:37 15 one of plaintiff's other attorneys, a fellow by the name of
03:49:41 16 Mr. Goodman. Do you remember that?

03:49:42 17 A. Yes.

03:49:42 18 Q. And he had met with you before your testimony and gone
03:49:46 19 over it with you, right?

03:49:47 20 A. Yes.

03:49:47 21 Q. Okay. And do you remember him asking you this question
03:49:51 22 and you giving this answer: And when the police came at that
03:49:55 23 time, you knew the lawyer and the investigator, you knew that
03:49:58 24 they weren't the police isn't that true? And you said, yes.
03:50:03 25 You knew that they represented one of the defendants in the

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03:50:05 1 case isn't that true? Yes. In fact, they told you that,
03:50:09 2 didn't they? Yes. You gave that testimony under oath in a
03:50:13 3 proceeding in this case isn't that right when Mr. Goodman
03:50:16 4 asked you?
03:50:17 5 A. Yes. Yes.
03:50:18 6 Q. So it all happened a long time ago, right, Mr. Langston?
03:50:24 7 A. Yes.
03:50:25 8 Q. And it was a very scary incident, right? You have to say
03:50:29 9 yes?
03:50:30 10 A. Yes.
03:50:32 11 MR. KULWIN: That's all I have, sir. Nothing else,
03:50:35 12 Judge.
03:50:35 13 THE COURT: Non-repetitive.
03:50:35 14 - - -
03:50:35 15 ERIC LANGSTON, REDIRECT EXAMINATION
03:50:35 16 BY MR. LOEVY:
03:50:39 17 Q. All the times you have come to court, 2006, 2014, have you
03:50:42 18 ever, ever claimed that you could identify Mr. Fields and
03:50:45 19 Mr. Hawkins as the murderers?
03:50:47 20 A. No.
03:50:48 21 MR. LOEVY: I have no further questions.
03:50:49 22 THE COURT: Do any of the jurors have any questions
03:50:50 23 for the witness?
03:50:52 24 Thanks. You were excused. You can step down. We
03:50:54 25 will take a break for ten minutes. If we can have the

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03:50:57 1 previous witness back on the stand when we resume.

03:51:01 2 (Short break.)

04:01:21 3 THE COURT: We've got lieutenant Melean, right?

04:01:25 4 THE WITNESS: Melean.

04:01:26 5 THE COURT: My apologies. You are still under oath.

04:01:28 6 Do you understand that?

04:01:30 7 THE WITNESS: Yes.

04:01:30 8 THE COURT: You can have a seat as can everybody

04:01:32 9 else. Ms. Gorman, you can go ahead.

04:01:32 10 - - -

04:01:32 11 ^ WITNAME, DIRECT EXAMINATION

04:01:36 12 BY MR. NOLAND: Continued

04:01:36 13 BY MR. LOEVY:

04:01:37 14 Q. Detective Melean, we started off with me asking you about
04:01:40 15 the 2006 database records. Do you remember that?

04:01:42 16 A. Yes.

04:01:43 17 Q. Do you recall your testimony in the earlier proceeding in
04:01:45 18 which you said that those records from 2006 were lost?

04:01:48 19 A. Yes, when I asked the database guy, he told me he could
04:01:52 20 not find them.

04:01:53 21 Q. That all of the 2006 records were lost?

04:01:58 22 A. I believe so, yes.

04:01:59 23 Q. I'd like to to you about the Chicago Police Department
04:02:09 24 policies and practices for responding to a homicide subpoena?

04:02:12 25 A. Yes.

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04:02:13 1 Q. How would you go about ensuring that all documents
04:02:17 2 pursuant to a subpoena for a homicide ^ got produced?
04:02:19 3 A. For a some side calls?
04:02:26 4 Q. Some side?
04:02:28 5 A. The division would fill it out, send it back to the
04:02:32 6 subpoena unit and send it to court.
04:02:36 7 Q. The subpoena unit would send the request to the
04:02:38 8 detectives?
04:02:39 9 A. Correct.
04:02:39 10 Q. To fulfill the subpoena?
04:02:41 11 A. Yes.
04:02:42 12 Q. Were there any checks and balances to make sure that
04:02:45 13 everything was tendered?
04:02:46 14 A. Not that I am aware of. I didn't get too many complaints,
04:02:53 15 no.
04:02:53 16 Q. I'm sorry?
04:02:54 17 A. Not that I am aware of.
04:02:58 18 Q. If everything was tendered, people wouldn't know if they
04:03:02 19 had everything?
04:03:02 20 A. If somebody didn't have what they wanted, they would have
04:03:04 21 contacted us and seen what was wrong with the subpoena, yes.
04:03:07 22 Q. Why do you send the subpoenas to the detective division?
04:03:11 23 Why doesn't the people working under you just go to the
04:03:14 24 warehouse and get it themselves?
04:03:16 25 A. It's been the policy and procedures since before I got

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04:03:20 1 there.

04:03:20 2 Q. So you send the subpoenas to the detectives and they give
04:03:23 3 you whatever they give you?

04:03:26 4 MR. MICHALIK: Objection, misstates the testimony.

04:03:29 5 THE COURT: It's a question. The objection is
04:03:30 6 overruled.

04:03:33 7 THE WITNESS: Can you repeat that, please?

04:03:35 8 BY MS. GORMAN:

04:03:36 9 Q. So you would send a subpoena to the detective unit and
04:03:39 10 then the detectives would send you whatever they felt like
04:03:42 11 sending you; is that correct?

04:03:43 12 A. Not whatever they felt like sending me, whatever was in
04:03:47 13 the subpoena.

04:03:47 14 Q. Do you know how they kept their files in the detective
04:03:51 15 units?

04:03:52 16 A. No.

04:03:52 17 Q. Do you know if they have multiple files for homicide?

04:03:55 18 A. I am not part of the detective division. I don't handle
04:03:58 19 that.

04:03:59 20 Q. Do you know if they pick and choose which documents are
04:04:00 21 going to be tendered?

04:04:01 22 A. No, I don't know any of that.

04:04:02 23 Q. Do you know if the detective -- if the detective unit
04:04:07 24 copies everything that they're supposed to file in response to
04:04:09 25 a subpoena?

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04:04:10 1 A. Once again, I am not part of the detective division, so I
04:04:14 2 don't know the procedure.

04:04:14 3 Q. In other words, the Chicago Police Department's homicide
04:04:18 4 subpoena system depended on the detectives to be honest and
04:04:22 5 complete; isn't that correct?

04:04:27 6 A. I believe it was every job to do their job to the best of
04:04:31 7 their ability.

04:04:32 8 Q. My question is about the homicide, the subpoena unit
04:04:35 9 depended on the detectives to be complete and honest; isn't
04:04:35 10 that correct?

04:04:40 11 A. That's correct.

04:04:42 12 MS. GORMAN: I have nothing more.

04:04:43 13 THE COURT: Mr. Michalik.

04:04:46 14 - - -

04:04:46 15 ^ WITNAME, CROSS-EXAMINATION

04:04:46 16 BY MR. MICHALIK:

04:04:50 17 Q. Thank you, your Honor. Good afternoon, lieutenant.
04:04:59 18 Backup just a little bit.

04:05:00 19 Could you tell us and the ladies and gentlemen of the
04:05:03 20 jury when you first started with the Chicago Police
04:05:05 21 Department?

04:05:05 22 A. 7/7/92.

04:05:07 23 Q. Was that 1992?

04:05:09 24 A. 1992, sorry.

04:05:10 25 Q. Eventually you became a sergeant as you told Ms. Gorman?

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04:05:14 1 A. Yes.

04:05:14 2 Q. In 1999?

04:05:16 3 Q. And you became a lieutenant?

04:05:17 4 A. Yes.

04:05:17 5 Q. And when did that take place?

04:05:20 6 A. I think it was October 2010.

04:05:21 7 Q. What is your current assignment as a lieutenant?

04:05:23 8 A. I am the tactical lieutenant for the 22nd district.

04:05:28 9 Q. 22nd district on the south side?

04:05:31 10 A. Yes, correct.

04:05:32 11 Q. Let's go back to 2006. At that time, I think you said you

04:05:36 12 were administrative sergeant of the records inquiry section

04:05:39 13 is that accurate?

04:05:40 14 A. That's correct.

04:05:40 15 Q. Can you tell the ladies and gentlemen of the jury exactly

04:05:43 16 what is the records inquiry section?

04:05:47 17 A. At that time, it was a section that was a multitude of

04:05:51 18 functions, they had many various units, subpoena section,

04:05:56 19 FOIA, administration, numerical, gun registration, records

04:06:01 20 processing, data entry, and latent print examiners, there's

04:06:07 21 many.

04:06:08 22 Q. And as the administrative sergeant, you were a supervisor

04:06:11 23 overall of those different areas?

04:06:13 24 A. Yes, we had civilians who supervised all of them.

04:06:18 25 Q. Was the records inquiry section part of the records

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04:06:22 1 division?

04:06:22 2 A. Yes.

04:06:22 3 Q. And you said that the subpoena unit was part -- under that

04:06:26 4 whole umbrella?

04:06:27 5 A. That's correct.

04:06:28 6 Q. Where was your office located in 2006?

04:06:32 7 A. In 2006, my office was located on the first floor in the

04:06:37 8 back of the unit.

04:06:38 9 Q. And where was that?

04:06:39 10 A. 3510 South Michigan.

04:06:41 11 Q. Is that police headquarters?

04:06:43 12 A. Yes, it is.

04:06:44 13 Q. As the administrative sergeant for the records inquiry

04:06:48 14 section, what was your role with respect to the subpoena unit?

04:06:52 15 A. With respect to the subpoena unit, we had a civilian

04:06:58 16 supervisor, detective Martin who handled the day-to-day

04:07:01 17 operations and my role just came if anything went wrong or she

04:07:05 18 wasn't there, somebody had a complaint, it might be forwarded

04:07:08 19 to my attention and then I would take care of it.

04:07:11 20 Q. How long did you hold the position of administrative

04:07:16 21 sergeant for records inquiry section?

04:07:18 22 A. A little over five years.

04:07:20 23 Q. During that time period, how many people worked in the

04:07:25 24 subpoena unit?

04:07:25 25 A. I'd say approximately eight.

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04:07:28 1 Q. Were they full-time employees?

04:07:30 2 A. Yes, they were.

04:07:30 3 Q. Did they work five days a week?

04:07:33 4 A. Correct.

04:07:33 5 Q. So do you have any idea how many subpoenas were served on

04:07:37 6 the Chicago Police Department on a weekly basis in 2006?

04:07:41 7 A. Not offhand, but it's many.

04:07:43 8 Q. All right. So you had eight individuals working five days

04:07:47 9 a week, eight hours a day doing nothing but responding to

04:07:52 10 subpoenas to the Chicago Police Department?

04:07:54 11 A. That's correct.

04:07:54 12 Q. Did you actually process any subpoenas yourself when you

04:08:04 13 were the administrative sergeant?

04:08:05 14 A. No, I did not.

04:08:06 15 Q. You just oversaw the people who did that work?

04:08:10 16 A. That's correct.

04:08:10 17 Q. I think you said that sometimes there might be a problem

04:08:16 18 and you would have to get involved?

04:08:17 19 A. That is correct.

04:08:18 20 Q. If there was a problem with a subpoena and somebody said I

04:08:22 21 want to talk to a supervisor, you might have been one of those

04:08:25 22 people?

04:08:25 23 A. That's correct.

04:08:25 24 Q. Now?

04:08:29 25 MS. GORMAN: Objection to time period.

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04:08:30 1 THE COURT: Do that with the next question.

04:08:34 2 BY MR. MICHALIK:

04:08:34 3 Q. All right. So you're talking about the time frame of 2005

04:08:38 4 to 2010 when you were the administrative sergeant?

04:08:40 5 A. That's correct.

04:08:40 6 Q. When the subpoena unit responded to a subpoena, would

04:08:46 7 there be someone assigned to go through each and every page of

04:08:49 8 whatever it was that was being produced in response to the

04:08:52 9 subpoena?

04:08:53 10 A. No, that would be the subpoena officer, yes, they would go

04:08:56 11 through the subpoena for sure.

04:08:57 12 Q. Would anyone go through whatever ^ was being produced and

04:09:01 13 pull things out?

04:09:02 14 A. No.

04:09:02 15 Q. So whatever materials were being received by the subpoena

04:09:07 16 unit, that's what would be forwarded to whoever it was that

04:09:10 17 was requesting that?

04:09:11 18 A. That's correct.

04:09:11 19 Q. You talked a little bit to Ms. Gorman about how the

04:09:21 20 subpoena unit would respond to a subpoena for a homicide file.

04:09:25 21 Do you recall that testimony?

04:09:26 22 A. Yes.

04:09:27 23 Q. All right. So let's start. The subpoena comes in to the

04:09:32 24 subpoena unit, correct?

04:09:34 25 A. Correct.

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04:09:34 1 Q. All right. What happens at that point if it's a homicide
04:09:40 2 file?

04:09:40 3 A. A copy of the subpoena is sent directly to the detective
04:09:43 4 division.

04:09:43 5 Q. Is the detective division part of the records division?

04:09:48 6 A. No.

04:09:48 7 Q. Okay. What if any role did the detective division play in
04:09:52 8 responding to subpoenas involving homicide files?

04:09:54 9 A. They would send whatever they had back to the subpoena
04:09:59 10 section and the subpoena section would take whatever they had
04:10:03 11 and forward it out.

04:10:03 12 Q. So the detective division would contact whoever it was
04:10:06 13 that they were looking for a homicide file and then send
04:10:10 14 whatever they got to the subpoena unit?

04:10:12 15 A. Correct.

04:10:13 16 Q. Now, Ms. Gorman also asked you some questions about a
04:10:23 17 contact that you had from an attorney ^ Jean ^ Gene Snyder.
04:10:26 18 Do you recall those questions?

04:10:26 19 A. Yes.

04:10:26 20 Q. All right. And Ms. Snyder brought some type of a problem
04:10:31 21 to your attention, true?

04:10:32 22 A. True.

04:10:33 23 Q. Did you respond to whatever it was that Ms. Snyder was
04:10:38 24 requesting?

04:10:38 25 A. Yes, I did.

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04:10:39 1 Q. How did you know that?

04:10:41 2 A. Because once she gave the fax ^ once I found out that I
04:10:46 3 had the fax that had my name on it, although it was spelled
04:10:50 4 incorrectly, it was my name and it was me, I was sure that the
04:10:54 5 spoken was handled appropriately.

04:10:56 6 Q. After that ^ contact with Ms. Snyder, did she ever get in
04:11:01 7 touch with you again about any further problems she was
04:11:04 8 having?

04:11:04 9 A. No.

04:11:05 10 Q. Did you ever learn from anyone in the subpoena unit that
04:11:07 11 Ms. Snyder was continuing to have problems with whatever it
04:11:11 12 was that she was requesting?

04:11:11 13 A. No.

04:11:12 14 Q. Going back to the process of responding to a subpoena for
04:11:26 15 a homicide file, when that file would come in from the
04:11:31 16 detective division, would it be the original file or it would
04:11:35 17 be a copy of a file?

04:11:36 18 A. A copy.

04:11:49 19 MR. MICHALIK: If I may have a moment, your Honor.

04:11:54 20 THE COURT: Sure.

04:11:55 21 MR. MICHALIK: No further questions. Thank you.

04:11:57 22 THE COURT: Mr. Kulwin, anything?

04:11:58 23 MR. KULWIN: No, Judge.

04:11:59 24 THE COURT: Redirect, Ms. Gorman.

04:12:01 25 MR. LOEVY: Yes, very briefly.

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04:12:02 1 - - -

04:12:02 2 ^ WITNAME, REDIRECT EXAMINATION

04:12:03 3 BY MR. NOLAND:

04:12:03 4 BY MS. GORMAN:

04:12:04 5 Q. Lieutenant Melean, Ms. Snyder was complaining because she

04:12:09 6 didn't get all of the files from the Fields, from the Hickman

04:12:14 7 Smith murder?

04:12:15 8 A. I believe there was a problem with one of the case

04:12:19 9 reports. I don't recall which file it was, but, yes.

04:12:21 10 Q. She never got this file, did she?

04:12:23 11 A. I have no idea.

04:12:23 12 Q. You have no idea, don't you. Because the records people

04:12:26 13 would send the request to the homicide -- to the detectives

04:12:29 14 and they would send whatever they wanted back to her isn't

04:12:33 15 that correct?

04:12:33 16 MR. MICHALIK: Object to the form.

04:12:33 17 BY MR. LOEVY:

04:12:34 18 Q. And that's what you would produce?

04:12:36 19 THE COURT: Rephrase the question.

04:12:37 20 BY MR. LOEVY:

04:12:38 21 Q. The records?

04:12:38 22 THE COURT: You got two questions in there.

04:12:40 23 BY MR. LOEVY:

04:12:40 24 Q. The records people would send the request to the homicide

04:12:44 25 -- to the detective division isn't that correct?

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04:12:46 1 A. Correct.

04:12:46 2 Q. And then the detectives would send something back to you?

04:12:50 3 A. Yes.

04:12:50 4 Q. And that's what you would produce isn't that correct?

04:12:53 5 A. That's correct.

04:12:53 6 Q. And you understand that Ms. Snyder never got this file;

04:12:53 7 isn't that correct?

04:12:59 8 A. I did not know she never got the file.

04:13:04 9 MS. GORMAN: Thank you. I am done.

04:13:05 10 THE COURT: Mr. Michalik.

04:13:42 11 MR. MICHALIK: No.

04:13:42 12 THE COURT: Do the jurors have any questions?

04:13:50 13 (Sidebar.

04:13:51 14 THE COURT: The question is who filled the request at

04:13:54 15 the detective division, is it the detective or anybody else?

04:13:56 16 I'll ask him if he knows. I'll lay the foundation.

04:14:02 17 (The following proceedings were had in open court in the

04:14:03 18 presence and hearing of the jury:)

04:14:03 19 THE COURT: So the question is do you know -- at the

04:14:05 20 detective division, do you know who type of personnel fills

04:14:09 21 the request that is sent to the detective or.

04:14:14 22 THE WITNESS: No, I believe they had their own person

04:14:16 23 in place.

04:14:17 24 THE COURT: But you don't know exactly who that would

04:14:19 25 be.

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04:14:20 1 THE WITNESS: I don't know exactly what it is right
04:14:21 2 now.

04:14:21 3 THE COURT: Well, back at the time in question here
04:14:25 4 when this particular subpoena came in, do you know whether the
04:14:28 5 person on the other end filling the request would have been a
04:14:32 6 detective or somebody other than a detective?

04:14:35 7 THE WITNESS: I believe at that time it was an
04:14:37 8 officer.

04:14:37 9 THE COURT: An officer. Follow-up questions?

04:14:39 10 MR. LOEVY: No, your Honor.

04:14:40 11 MR. MICHALIK: No.

04:14:41 12 THE COURT: Thanks. You are excused.

04:14:43 13 Next witness, please.

04:14:44 14 MR. LOEVY: Your Honor, the next witness is going to
04:14:47 15 be a reader and perhaps the Court could explain this is trial
04:14:50 16 testimony from 1986 of a witness. Carlos Willis.

04:14:56 17 THE COURT: What's going to happen next is that some
04:14:59 18 of the testimony from the 1986 criminal trial is going to be
04:15:03 19 read to you and it's the testimony of Carlos.

04:15:08 20 MR. LOEVY: Carlos Willis.

04:15:09 21 THE COURT: Carlos Willis and so the gentleman at the
04:15:12 22 podium is going to ask the questions that the lawyer asked in
04:15:15 23 the 19 '86 trial and the gentleman on the witness stand is
04:15:18 24 going to read the answers that Mr. Willis gave at the trial,
04:15:21 25 so I am not going to swear them in because all they are doing

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04:15:25 1 is reading testimony. Can you identify what you are
04:15:44 2 /#12K3W4R-7 my name is same h-e-p-p-e-l-l, my name is /KAOEUL
04:15:49 3 b-u-l-l-o-c-k, he is the witness.
04:15:53 4 THE COURT: Go ahead.
04:15:56 5 - - -
04:15:56 6 CARLOS WILLIS, DIRECT EXAMINATION
04:15:57 7 BY MR. HEPPELL: (Reading:)
04:15:57 8 Q. Sir, I want you to state your name and spell your last
04:16:01 9 name for the record?
04:16:02 10 A. Carlos Willis, w-i-l-l-i-s.
04:16:05 11 Q. Where do you live?
04:16:05 12 A. 3846, south Langley.
04:16:08 13 Q. That's in the City of Chicago?
04:16:11 14 A. Yes.
04:16:13 15 Q. How old are you?
04:16:14 16 A. 16.
04:16:15 17 Q. Are you in school?
04:16:16 18 A. Yes.
04:16:21 19 Q. What school?
04:16:22 20 A. When Dell Phillips.
04:16:25 21 Q. What grade are you in?
04:16:26 22 A. 11th.
04:16:27 23 Q. Did you go out for any sports?
04:16:30 24 A. Yes.
04:16:30 25 Q. What sports?

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04:16:30 1 A. Baseball.

04:16:31 2 Q. Who did you live with on Langley?

04:16:33 3 A. My grandmother.

04:16:33 4 Q. How long have you lived at that address?

04:16:35 5 A. I have been living there all my life.

04:16:37 6 Q. Calling your attention to April 28, 1984, did you have

04:16:45 7 cakes to be near the baseball field located across from 706

04:16:49 8 East 39th Street?

04:16:50 9 A. Yes.

04:16:51 10 Q. What were you doing there?

04:16:53 11 A. We was getting ready to play baseball.

04:16:57 12 Q. Who else was there with you that you remember?

04:16:59 13 A. Randy Langston.

04:17:00 14 Q. Anybody else?

04:17:02 15 A. I think his little sister Marcia.

04:17:05 16 Q. Where were you standing at that time, across the street?

04:17:11 17 A. Standing right by the personal, by the mailbox.

04:17:14 18 Q. Now, did you know a person by the name of Fuddy?

04:17:18 19 A. Yes.

04:17:19 20 Q. Do you know his name?

04:17:21 21 A. No.

04:17:22 22 Q. How long had you known Fuddy?

04:17:25 23 A. About two years.

04:17:26 24 Q. Do you know a person by the name of Tom?

04:17:30 25 A. No.

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04:17:31 1 Q. Did you see Fuddy that morning?

04:17:34 2 A. Earlier in the day.

04:17:36 3 Q. Where was he standing?

04:17:38 4 A. Under the building.

04:17:39 5 Q. While you were standing at the baseball field, did you

04:17:45 6 hear anything unusual?

04:17:46 7 A. Yes.

04:17:47 8 Q. What did you hear?

04:17:50 9 A. I heard gunshots.

04:17:51 10 Q. How many shots did you hear?

04:17:57 11 A. About six.

04:17:57 12 Q. Which direction did you go after you heard the shots?

04:18:03 13 What did you do after you heard the shots?

04:18:05 14 A. I ran south.

04:18:07 15 Q. Would that be south along what street?

04:18:13 16 A. Langley, going towards Oakwood.

04:18:15 17 Q. Where was Randy Langston at that time?

04:18:17 18 A. I don't know.

04:18:18 19 Q. After you heard shots, did you have occasion to look back

04:18:24 20 towards the building?

04:18:25 21 A. Yes.

04:18:26 22 Q. When you looked back towards the building, what did you

04:18:31 23 see?

04:18:31 24 A. I seen one man going under the building.

04:18:34 25 Q. When you say under the building, where was he going?

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04:18:38 1 A. Through the breezeway.

04:18:40 2 Q. Could you see that man's face?

04:18:44 3 A. No.

04:18:45 4 Q. Why not?

04:18:46 5 A. Because he had something on, a ski mask.

04:18:51 6 Q. Where was the ski mask?

04:18:54 7 A. It was on his head.

04:18:55 8 Q. Now, after the shots, did you return back to the building

04:19:00 9 sometime later that day?

04:19:01 10 A. Yes.

04:19:02 11 Q. Did you speak with police officers either that day or the

04:19:07 12 next day?

04:19:08 13 A. The next morning.

04:19:08 14 Q. Where did the police officers come to?

04:19:11 15 A. To my house.

04:19:13 16 Q. And did you tell them what you have just told to the

04:19:17 17 judge?

04:19:17 18 A. Yes.

04:19:17 19 Q. Now, calling your attention to about a year later, May

04:19:24 20 1985, did the police once again come to your house?

04:19:27 21 A. Yes.

04:19:28 22 Q. Do you know the name of the officer that came to your

04:19:31 23 house on that day?

04:19:32 24 A. Yes. His name was O'Callaghan.

04:19:34 25 Q. Now, what, if anything, did you do when Detective

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04:19:42 1 O'Callaghan came to your house that day in May of 1985?

04:19:45 2 A. Well, he asked us to go down to the police station.

04:19:51 3 Q. He asked you to go to the police station?

04:19:53 4 A. Yes.

04:19:53 5 Q. Did you go to the police station?

04:19:55 6 A. Yes.

04:19:57 7 Q. Who else went with you?

04:19:58 8 A. My grandmother.

04:20:00 9 Q. What's your grandmother's name?

04:20:02 10 A. Evelyn Custer.

04:20:05 11 Q. When you went to that police station, what did you do?

04:20:10 12 A. He showed up, he showed us a lineup of men.

04:20:15 13 Q. And were you able to identify anybody in that lineup?

04:20:18 14 A. No.

04:20:19 15 Q. Now, I would like to show you what's been previously

04:20:24 16 marked as Defense Exhibit number 6. Do you recognize this

04:20:29 17 photograph, what's shown in this photograph?

04:20:31 18 A. Yes.

04:20:31 19 Q. What is that?

04:20:33 20 A. That's the men in the lineup.

04:20:35 21 Q. Is that the same lineup that you saw?

04:20:38 22 A. Yes.

04:20:39 23 Q. After you indicated that you couldn't identify anybody,

04:20:44 24 what did Detective O'Callaghan say to you?

04:20:47 25 A. He kept telling me to look at this one man.

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04:20:51 1 Q. Which man was that?

04:20:55 2 A. The one on the left end.

04:20:57 3 Q. Would you please place an X over that man's head. May the

04:21:02 4 record reflect the witness has placed an X over the defendant,

04:21:05 5 Earl Hawkins.

04:21:10 6 How many times did he ask you to look at that one

04:21:12 7 man?

04:21:13 8 A. About five or six.

04:21:14 9 Q. Was your grandmother present at that time?

04:21:17 10 A. Yes.

04:21:18 11 Q. What else did he say to you about identifying that man?

04:21:22 12 A. I kept asking me to look at him to make sure that I know

04:21:26 13 him. I told him I didn't see him and I didn't know who did

04:21:32 14 it, so I couldn't identify him.

04:21:36 15 Q. Was there any conversation about section 8 housing?

04:21:40 16 A. Yes.

04:21:40 17 Q. Who was that conversation with?

04:21:43 18 A. With my grandmother and O'Callaghan.

04:21:45 19 Q. You were in the same room when that was going on?

04:21:49 20 A. Yes, in my house and at the police station.

04:21:52 21 Q. Now, in April of 1984, you knew Randy Langston, right?

04:21:59 22 A. Yes.

04:22:00 23 Q. Was he a member of any gang?

04:22:02 24 A. Not that I know of.

04:22:04 25 Q. Do you know anybody by the name of Gerald Morris?

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04:22:10 1 A. No.

04:22:10 2 Q. How about Richard Buckles?

04:22:12 3 A. Yes.

04:22:13 4 Q. Is Richard Buckles a member of a gang?

04:22:16 5 A. I don't think so.

04:22:16 6 Q. I would like to show you what's been marked as Defense

04:22:23 7 Exhibit number 1. Do you recognize what's shown in that

04:22:26 8 photograph?

04:22:26 9 A. Yes.

04:22:26 10 Q. What's shown in that photograph?

04:22:30 11 A. This shows the baseball park where we were playing and the

04:22:33 12 building.

04:22:33 13 Q. Do you see the direction in which you ran after you heard

04:22:36 14 the shots?

04:22:37 15 A. Yes.

04:22:47 16 MR. NOLAND: This would be the cross-examination by

04:22:49 17 Mr. R-u-e-k-k-e-r-it, the assistant state's attorney.

04:22:55 18 BY MR. NOLAND:

04:22:56 19 Q. Carlos, where you live is known as the Ida B. Wells

04:23:00 20 housing project, right?

04:23:01 21 A. Yes.

04:23:02 22 Q. You're right across Langstonly from that 706 building,

04:23:05 23 correct?

04:23:06 24 A. Correct.

04:23:06 25 Q. Now, you say that Fuddy was a member of the Goon Squad?

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04:23:09 1 A. Yes.

04:23:09 2 Q. You know that because you were a member of the Goon Squad?

04:23:12 3 A. No.

04:23:12 4 Q. You're familiar with the El Rukns, aren't you?

04:23:14 5 A. Yes.

04:23:14 6 Q. You know where the El Rukn temple is, don't you?

04:23:18 7 A. Yes.

04:23:18 8 Q. In fact, if you stand out in front of your building, you

04:23:21 9 can see the El Rukn temple, can't you?

04:23:23 10 A. No.

04:23:23 11 Q. If you walk to the corner of Langley and 39th Street, you

04:23:29 12 could see it, couldn't you?

04:23:31 13 A. Yes.

04:23:31 14 Q. You could see it from the baseball field, right?

04:23:34 15 A. Yes.

04:23:34 16 Q. You were living in those Ida B. Wells project buildings

04:23:38 17 when this murder happened, right?

04:23:39 18 A. Yes.

04:23:40 19 Q. How did you know Fuddy was in the Goon Squad?

04:23:45 20 A. Because I know you still live in that same building today,

04:23:53 21 right ^ .

04:23:54 22 A. Yes.

04:23:54 23 Q. You can still see the El Rukn temple if you walk to the

04:23:59 24 corner of Langley and 39th Street, right?

04:24:01 25 A. Yes.

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04:24:01 1 Q. How far would you say your building is from the corner of
04:24:05 2 39th and Langley?
04:24:06 3 A. It's about half a block.
04:24:07 4 Q. Now, you remember talking to the police after this
04:24:09 5 incident, don't you?
04:24:10 6 A. Yes.
04:24:10 7 Q. You told the police you saw two men out there shooting,
04:24:13 8 right?
04:24:14 9 A. No.
04:24:14 10 Q. Do you remember talking to Robert Evans and detective
04:24:18 11 hood?
04:24:18 12 A. No, just O'Callaghan.
04:24:19 13 Q. You don't remember talking to detectives hood and Evans?
04:24:23 14 A. It was somebody with them, but I do know who they was.
04:24:27 15 They didn't tell me their names.
04:24:28 16 Q. In April of '84, right after the shooting, did you talk to
04:24:33 17 some detectives?
04:24:33 18 A. The next morning.
04:24:34 19 Q. You told them what you had seen, didn't you?
04:24:37 20 A. Yes.
04:24:37 21 Q. Do you remember telling them you saw two guys out there
04:24:41 22 shooting?
04:24:41 23 A. No.
04:24:42 24 Q. Do you remember telling them after the shooting you saw
04:24:45 25 both men run back the way they came through the breezeway?

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04:24:50 1 A. No.

04:24:51 2 Q. Do you remember telling them after a short time, you heard

04:24:53 3 a car door slam and the squealing of tires?

04:24:57 4 A. No.

04:24:57 5 Q. Do you remember telling them after the shooting you stood

04:25:00 6 together for several minutes with Randy Langston?

04:25:01 7 A. No.

04:25:02 8 Q. You do remember going to look at a lineup, though, don't

04:25:05 9 you?

04:25:05 10 A. Yes.

04:25:05 11 Q. That's after you talked to O'Callaghan, right?

04:25:07 12 A. Right.

04:25:10 13 Q. By the way, Carlos, have you ever been in that El Rukn

04:25:14 14 building at 39th and Drexel?

04:25:15 15 A. No.

04:25:15 16 Q. You don't spin records for the El Rukns on Friday nights?

04:25:18 17 A. No.

04:25:18 18 Q. Do you remember talking to O'Callaghan in April of this

04:25:25 19 year?

04:25:25 20 A. No.

04:25:25 21 Q. At your apartment?

04:25:27 22 A. No.

04:25:27 23 Q. With your grandmother present?

04:25:30 24 A. No.

04:25:30 25 Q. And sergeant Murphy present?

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04:25:32 1 A. No.

04:25:32 2 Q. Do you remember that conversation?

04:25:34 3 A. No.

04:25:34 4 Q. You don't telling them you pun records for the El Rukns?

04:25:39 5 A. No.

04:25:39 6 Q. Who's the first person that contacted you about this case?

04:25:47 7 A. O'Callaghan is the one that kept coming over to my house.

04:25:50 8 Q. How about Wednesday of last week?

04:25:54 9 A. I wasn't home.

04:25:55 10 Q. Didn't you get a subpoena?

04:25:57 11 A. My grandmother did.

04:25:58 12 Q. You didn't? I'm sorry I didn't hear the answer?

04:26:01 13 A. No. My grandmother got it.

04:26:08 14 MR. NOLAND: Thank you.

04:26:11 15 THE COURT: Now you are doing the redirect

04:26:13 16 examination from the trial? /#12K3W4R-6 correct.

04:26:18 17 - - -

04:26:18 18 CARLOS WILLIS, REDIRECT EXAMINATION

04:26:18 19 BY MR. NOLAND: (Reading)

04:26:20 20 Q. This man drove you to court and home from court; is that

04:26:20 21 right?

04:26:24 22 A. Yes.

04:26:24 23 Q. That was all that he did?

04:26:25 24 A. Right.

04:26:25 25 Q. He never interviewed you about the case?

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04:26:28 1 A. No.

04:26:28 2 Q. You first were interviewed by Mr. Smeeton and myself when

04:26:32 3 you were brought to court; is that right?

04:26:32 4 A. Yes.

04:26:35 5 Q. Prior to that you had been interviewed by the police?

04:26:38 6 A. Right.

04:26:38 7 Q. Mr. O'Callaghan?

04:26:40 8 A. O'Callaghan.

04:26:40 9 Q. And then the day after the shooting, you were interviewed

04:26:43 10 by the police also, right?

04:26:44 11 A. Yes. ^ end of deposition.

04:26:50 12 THE COURT: Is that it?

04:26:51 13 MR. LOEVY: That's it, your Honor.

04:26:52 14 THE COURT: Okay. You can step down.

04:26:54 15 Next witness.

04:26:54 16 MR. LOEVY: Your Honor, at this time plaintiff calls

04:26:56 17 Mr. O'Callaghan.

04:27:18 18 (Witness sworn.)

04:27:18 19 THE COURT: Have a seat.

04:27:28 20 - - -

04:27:28 21 DAVID O'CALLAGHAN, DIRECT EXAMINATION

04:27:28 22 BY MR. LOEVY:

04:27:36 23 Q. Sir, if you would state your name for the record, please.

04:27:38 24 A. David O'Callaghan, that's O'Callaghan.

04:27:43 25 Q. And you are a former Chicago police officer, correct?

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04:27:47 1 A. Yes, sir.

04:27:47 2 Q. All right. I want to shoot your attention forward to err

04:27:53 3 I can Langston. You did investigate the Smith/Hickman

04:27:56 4 homicide, correct?

04:27:56 5 A. Yes, sir, I did.

04:27:57 6 Q. And in the process you developed some eyewitnesss against

04:28:00 7 Mr. Fields and Mr. Hawkins, correct?

04:28:02 8 A. That would be correct.

04:28:03 9 Q. And one of the eyewitnesss you developed was Eric

04:28:06 10 Langston, correct?

04:28:06 11 A. Yes, he was among them.

04:28:07 12 Q. That was the man who was in court an hour ago?

04:28:10 13 A. Yes, sir.

04:28:11 14 Q. Did you remember him?

04:28:12 15 A. Yes, I remembered him.

04:28:13 16 Q. All right. Do you remember his relationship to Randy

04:28:17 17 Langston?

04:28:17 18 A. I think they were Eric and Randy, they were brothers.

04:28:28 19 Correct. I'm sorry. You asked me his relationship to Randy,

04:28:32 20 brothers.

04:28:32 21 Q. Thank you.

04:28:33 22 Do you remember how old Eric was at the time?

04:28:36 23 A. I believe he was -- I know he said 10 or 11, but I believe

04:28:41 24 he was about 15.

04:28:42 25 Q. 14 sound right?

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04:28:43 1 A. It's right in that area, yes.

04:28:45 2 Q. All right. And do you remember where Eric Langston was at

04:28:49 3 the time of the shootings?

04:28:50 4 A. Eric Langston?

04:28:57 5 Q. Yes?

04:28:57 6 A. I believe he was in his apartment.

04:28:59 7 Q. He was indoors at the time of the shooting, correct?

04:29:02 8 A. I believe that's what he just said, yes.

04:29:04 9 Q. Is that how you remembered it?

04:29:05 10 A. I'd have to look at all my reports, but, yeah, probably,

04:29:08 11 it would say that.

04:29:09 12 Q. You got an eyewitness ID from a guy who was inside,

04:29:13 13 didn't you?

04:29:13 14 A. Yes.

04:29:13 15 Q. And his apartment in fact was in the back of the building,

04:29:18 16 wasn't it?

04:29:19 17 A. Back and the side, yes.

04:29:21 18 Q. Do you remember where his apartment was, sir?

04:29:23 19 A. Yes.

04:29:23 20 Q. Now, what description did Eric Langston give you of the

04:29:32 21 two men he saw shooting the victims prior to you showing him

04:29:37 22 photos in a lineup?

04:29:39 23 A. I didn't take a full description that day, just indicated

04:29:43 24 that he would be able to identify them.

04:29:44 25 Q. I didn't ask you if you took a full description. I said

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04:29:49 1 what description was Eric Langston able to provide you of the
04:29:51 2 shooters before you showed him the pictures of your suspects?

04:29:54 3 A. I didn't take a description.

04:29:55 4 Q. So, in other words, he was unable to describe anything,
04:29:58 5 wasn't he?

04:29:59 6 MR. KULWIN: Objection, argumentative, Judge.

04:30:01 7 THE COURT: Overruled.

04:30:02 8 THE WITNESS: I didn't ask key questions because I
04:30:05 9 knew I was going to bring him to a different location later,
04:30:08 10 so the answer is, no, I didn't ask all those questions.

04:30:12 11 MR. LOEVY: Your Honor, I'd ask that that be
04:30:14 12 stricken.

04:30:14 13 THE COURT: Stricken as nonresponsive. Put the
04:30:17 14 question again if you'd like.

04:30:19 15 BY MR. LOEVY:

04:30:19 16 Q. If Eric was able to tell you before you showed him the
04:30:22 17 picture if the perpetrator was white or black?

04:30:24 18 A. I didn't ask at that time.

04:30:26 19 Q. Was Eric able to tell you if the person was tall or short?

04:30:29 20 A. I didn't ask at that time.

04:30:30 21 Q. How about if he had facial hair or a beard?

04:30:32 22 A. I did not ask at that time.

04:30:33 23 Q. Was it a real good idea to show him Mr. Fields' picture
04:30:38 24 before you asked him for a description?

04:30:39 25 A. It was a perfect idea.

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04:30:41 1 Q. Where are your notes, sir, of what Eric told you before
04:30:47 2 you showed him the photo and the lineup?

04:30:49 3 A. I didn't take notes of those interviews on that day for my
04:30:54 4 own reasons.

04:30:54 5 Q. The answer is there are no notes?

04:30:56 6 A. There are no notes from that day, you are correct.

04:30:58 7 Q. You are going to have to go off your memory, right, you
04:31:03 8 are going off your memory of what he told you, you don't have
04:31:06 9 notes?

04:31:06 10 A. As I told you, I didn't ask him the questions. My memory
04:31:09 11 is I spoke to him, made arrangements later.

04:31:12 12 Q. I think we are talking past each other. I asked you
04:31:14 13 you're going off your memory, right?

04:31:17 14 MR. KULWIN: I am going to object. The question is
04:31:20 15 argumentative.

04:31:20 16 THE COURT: No, it's not. The objection is
04:31:22 17 overruled. ^ .

04:31:24 18 THE WITNESS: I'm going off my police reports that I
04:31:27 19 submitted in the following dates.

04:31:28 20 BY MR. LOEVY:

04:31:29 21 Q. And you know from your police reports that there is no
04:31:30 22 description, right?

04:31:33 23 A. From my police reports?

04:31:34 24 Q. Yes.

04:31:35 25 A. From -- okay. The answer is I knew descriptions and I did

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04:31:43 1 not take full statements that day.

04:31:45 2 Q. All right. I will -- you didn't take any statement that

04:31:49 3 day, did you?

04:31:50 4 A. On May 14th and 15?

04:31:52 5 Q. Correct.

04:31:52 6 A. No, I did not.

04:31:54 7 Q. All right. All I'm saying, sir, is do you have an

04:31:58 8 independent recollection of talking to Eric Langston all these

04:32:01 9 years later?

04:32:01 10 A. I do.

04:32:02 11 Q. So as you sit here today, you can remember the

04:32:04 12 conversation with Eric?

04:32:05 13 A. Pretty good, as I told you, it wasn't much of a

04:32:09 14 conversation. I remember speaking to the two --

04:32:12 15 Q. It's more of a yes, no, question. Do you remember it or

04:32:16 16 you don't?

04:32:16 17 A. I remember meeting the Langston boys.

04:32:18 18 Q. All right. For example, you had a chance to review your

04:32:21 19 reports, right?

04:32:21 20 A. I have reviewed them, yes.

04:32:23 21 Q. And you know what they say, right?

04:32:24 22 A. Basically.

04:32:26 23 Q. So I guess with that clarity, are you saying you know what

04:32:29 24 happened because you read about it or are you saying as you

04:32:32 25 sit there on the witness stand, you can remember the

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04:32:34 1 conversation, you remember the questions you asked him, which
04:32:37 2 is it?

04:32:37 3 A. The way your question is, the answer would be I didn't ask
04:32:41 4 him the loaded questions, so I can remember not asking him the
04:32:46 5 questions.

04:32:46 6 Q. Do you think -- so you made an intentional decision prior
04:32:50 7 to showing Nate's photograph, you said to yourself, I'm not
04:32:53 8 going to ask him to tell me what the guy looked like, that was
04:32:56 9 a decision you made?

04:32:56 10 MR. KULWIN: Judge, I am going to object to the
04:32:58 11 question implying that he only showed him Nate's photograph.

04:33:01 12 THE COURT: Overruled.

04:33:02 13 MR. LOEVY: Objection to argumentative.

04:33:03 14 THE COURT: Overruled. I don't want a speaking
04:33:07 15 objection. Just give me a short version.

04:33:11 16 The objection is overruled.

04:33:13 17 BY MR. LOEVY:

04:33:13 18 Q. It sounds like you made an intentional decision not to
04:33:17 19 take a statement before you showed the pictures?

04:33:20 20 A. I made an intentionality decision not to take statements
04:33:25 21 or show photos on the dates of May 14th and 15th, yes.

04:33:28 22 Q. Prior to showing Nate in a lineup, you made an intentional
04:33:33 23 decision not to write what the kid had told you?

04:33:35 24 A. That's incorrect, sir. That's incorrect.

04:33:37 25 Q. You didn't write down what the kid told you as far as a

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04:33:40 1 description prior to Nate's lineup, right?

04:33:42 2 A. Your reference is incorrect.

04:33:43 3 Q. Okay. What description did he provide and where is it
04:33:47 4 written?

04:33:47 5 MR. KULWIN: Judge, I am going to object as asked and
04:33:50 6 answered.

04:33:50 7 THE COURT: Overruled.

04:33:50 8 THE WITNESS: Descriptions were in the initial
04:33:52 9 reports. I didn't repeat a summation of everybody's reports
04:33:59 10 that I had. I didn't go into detail as to description. He
04:34:04 11 already gave me a photo ID of Nate.

04:34:09 12 BY MR. LOEVY:

04:34:10 13 Q. All right. Let's move forward. It's a good idea when you
04:34:13 14 are interviewing people like the Langstons not to have people
04:34:17 15 together?

04:34:17 16 A. Yes.

04:34:17 17 Q. You should separate them?

04:34:19 18 A. Yes.

04:34:19 19 Q. Now, when you interviewed Randy Langston's little brother
04:34:23 20 Eric and Gerald Morris were also present for that interview
04:34:26 21 isn't that true, sir?

04:34:27 22 A. That's another incorrect statement on your part.

04:34:29 23 Q. Do you remember giving testimony at the trial in 1986 and
04:34:33 24 being asked these questions and giving these answers on page
04:34:36 25 272 and 273 at line 20: Is?

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04:34:41 1 "QUESTION: Now when you interviewed Randy Langston on
04:34:43 2 the 16th, that was at the state's attorney's office? And your
04:34:46 3 "ANSWER: That's correct
04:34:48 4 "QUESTION: And was Gerald Morris also present?
04:34:50 5 "ANSWER: He was up there, yes
04:34:52 6 "QUESTION: Was Eric Langston also present?
04:34:55 7 "ANSWER: Yes, sir."
04:34:58 8 The question is did you give those questions under
04:35:00 9 oath, sir?
04:35:01 10 A. I'll just answer as you read that, the answer is yes, the
04:35:06 11 inference is wrong.
04:35:07 12 Q. Okay. But you did give those answers under oath?
04:35:09 13 A. Yes, as you read them correctly, yes.
04:35:12 14 Q. Now, your report records -- showing you Plaintiff's
04:35:19 15 Exhibit 86, page 28. This is a report you signed and
04:35:25 16 authored, correct?
04:35:26 17 A. Yes.
04:35:26 18 Q. Dated the 17th of June 1985?
04:35:29 19 A. That's correct.
04:35:30 20 Q. Now, Eric Langston is never -- no police officer written
04:35:35 21 down any description by Eric Langston until after the date
04:35:39 22 Nate is arrested on June 17th, 85, that is a true statement,
04:35:42 23 right?
04:35:42 24 A. I don't know that. I'd have to see every single report
04:35:46 25 again.

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04:35:46 1 Q. Would it surprise you that Eric Langston had never given
04:35:49 2 any description prior to June? Yes or no, sir?

04:35:56 3 A. No, I don't know. I just don't know. I'm sorry.

04:35:58 4 Q. Isn't it true, sir, that of every single witness who was
04:36:01 5 outside that day, not a single one of them was able to provide
04:36:05 6 a single descriptor about what those men looked like, that's
04:36:10 7 true, isn't it?

04:36:10 8 A. On the day of the shooting?

04:36:12 9 Q. Yes. When the police came by the day of the shooting, not
04:36:16 10 one of the six witnesses who came forward and gave their names
04:36:19 11 and addresses was able to give a single description, that's
04:36:22 12 true, isn't it?

04:36:23 13 A. That's absolutely false.

04:36:24 14 Q. Tell me which witness described the victims that day?

04:36:27 15 A. First of all, I don't have the scene. I didn't get
04:36:30 16 involved in this case until 1985.

04:36:32 17 Q. I just asked -- you said it was false?

04:36:35 18 A. The answer is false because if you look at the
04:36:38 19 supplementary reports that were generated on that day,
04:36:41 20 descriptions were taken by other detectives called the scene
04:36:45 21 detectives, there might be a half dozen of them on that day,
04:36:50 22 and police officers that did provide descriptions at least two
04:36:56 23 of the offenders.

04:36:57 24 Q. We will get back to that because it's getting late in the
04:37:00 25 day. Your understanding is there was eyewitnesss at the scene

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04:37:04 1 who provided descriptions before they were shown photos?

04:37:06 2 A. A year before, more than a year before, yes.

04:37:08 3 Q. All right. Let's talk about Eric. He was indoors,
04:37:11 4 correct? We talked about that. He gave you an identification
04:37:14 5 of the shooter, right?

04:37:15 6 A. Shooters and passenger of the car, if I remember
04:37:20 7 correctly, but I'd have to review all my reports.

04:37:23 8 Q. Showing the report I showed you previously, Eric Langston
04:37:26 9 viewed the lineup and positive?

04:37:27 10 MR. KULWIN: Judge, can I get a page?

04:37:29 11 MR. LOEVY: This is the following page, 8629.

04:37:31 12 MR. KULWIN: 86?

04:37:32 13 THE COURT: Page 29.

04:37:33 14 BY MR. LOEVY:

04:37:34 15 Q. Eric Langston vowed the lineup and positively identified
04:37:36 16 the subject Nathson Fields as one of the subjects who shot the
04:37:40 17 victim. Do you see that?

04:37:41 18 A. Yes, I wrote that.

04:37:42 19 Q. And Eric would say at the time of the shooting at an
04:37:46 20 apartment behind the building; is that correct?

04:37:49 21 A. That's correct.

04:37:49 22 Q. Did you help Eric Langston identify the shooter?

04:37:53 23 A. In so many words, absolutely not.

04:37:56 24 Q. Eric identified other suspects for you, didn't he?

04:37:58 25 A. I believe so.

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04:37:59 1 Q. He identified Mr. Hawkins and Mr. Carter, right?

04:38:03 2 A. That's correct.

04:38:03 3 Q. So he was three for three on the suspects, right?

04:38:06 4 A. He was three out of four, nobody ever identified Hank

04:38:12 5 Andrews, none of them.

04:38:13 6 Q. We will talk about that tomorrow, sir. Who did Eric

04:38:15 7 identify as the short?

04:38:16 8 A. He identified Fields and Hawkins, I believe.

04:38:19 9 Q. All right. So Eric misidentified Hawkins, right? That's

04:38:25 10 true, isn't it?

04:38:26 11 MR. KULWIN: Judge, can he answer the question?

04:38:29 12 THE WITNESS: I don't believe that's totally truism.

04:38:31 13 THE ATTORNEY:

04:38:31 14 Q. All right. Eric as part of your lineup procedure said he

04:38:38 15 was the shooter?

04:38:39 16 A. He named him as one of the shooters.

04:38:41 17 Q. And you later in the trial heard Hawkins say I wasn't one

04:38:45 18 of the shooters, right?

04:38:45 19 A. I was excluded, no, I don't, I can't answer that question.

04:38:48 20 Q. All right. What is your understanding as you sit here

04:38:50 21 today of who the shooters were?

04:38:52 22 A. My understanding is that Hawkins was out front as the look

04:38:59 23 out.

04:38:59 24 Q. I asked the shooter?

04:39:00 25 MR. KULWIN: Judge.

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04:39:01 1 THE WITNESS: My answer is that as you sit here
04:39:06 2 today, Carter and Mr. Fields were the shooters.
04:39:08 3 BY MR. LOEVY:
04:39:08 4 Q. Can we agree that you procured a misidentification as
04:39:12 5 Hawkins as the shooter from Eric Langston?
04:39:13 6 A. We can agree that I showed a photo array and followed the
04:39:20 7 leads and the identifications.
04:39:21 8 Q. All right. Eric was indoor and he identified a shooter,
04:39:27 9 correct?
04:39:28 10 A. Shooters, yes.
04:39:30 11 Q. And he also identified a get away car driver, right?
04:39:34 12 A. No, you're wrong on that issue totally.
04:39:38 13 Q. He did not identify George Carter as the guy in the car?
04:39:40 14 A. He identified George Carter as the passenger of the car.
04:39:46 15 Q. All right.
04:39:46 16 A. And getting out of the car, he let the other two in the
04:39:50 17 back seat, nobody was able to identify the driver of that car.
04:39:53 18 Q. All right. You used the same 14 year old eyewitness to
04:39:57 19 both identify the shooter in the front of the building and the
04:40:01 20 get away passenger in the back of the building, right, same
04:40:04 21 boy?
04:40:04 22 A. I think -- I think they identified him in the back, so as
04:40:09 23 the shooters is running away from the scene.
04:40:12 24 Q. The question was the same boy identified the shooter who
04:40:16 25 shot the -- the shooting that happened in the front and the

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04:40:22 1 driver that was parked in the back, right, the same boy?

04:40:25 2 A. I think you are misstating. George Carter was not

04:40:29 3 identified by them as a shooter that day.

04:40:31 4 Q. No, George was identified as someone in the car, right?

04:40:34 5 A. Someone was -- he became a front seat passenger, yes.

04:40:40 6 Q. And the car was behind the building, right?

04:40:44 7 A. To my information, yes.

04:40:47 8 Q. So it's pretty impossible for somebody to have both

04:40:50 9 identified the shooter who is in the front?

04:40:52 10 MR. KULWIN: Objection, argumentative, Judge.

04:40:54 11 MR. LOEVY: I will withdraw it, your Honor.

04:40:56 12 BY MR. LOEVY:

04:40:57 13 Q. Now, Eric would not come to court and give that

04:41:00 14 identification, would he, at the criminal trial, he didn't

04:41:05 15 want to do it?

04:41:06 16 A. George Carter?

04:41:07 17 Q. No?

04:41:08 18 A. Which Carter are we talk about?

04:41:11 19 Q. When, said you got to come to court, you got to identify

04:41:15 20 the men that you saw, right?

04:41:16 21 A. I did not.

04:41:17 22 Q. Did you speak to Eric Langston prior to the trial?

04:41:20 23 A. No, that would be handled by the state's attorney's.

04:41:23 24 Q. So why is it the detectives wouldn't talk to witnesses

04:41:29 25 before trials?

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04:41:29 1 A. I am not going to say never ever.

04:41:31 2 Q. You talked to quite a few of the witnesses before the
04:41:33 3 trials, didn't you?

04:41:34 4 A. I may have.

04:41:35 5 Q. All right. Now, Eric in any event did not want to testify
04:41:40 6 at trial, correct?

04:41:41 7 A. I don't think any of them were too happy about testifying
04:41:45 8 in that trial.

04:41:45 9 Q. Yeah. Would you be happy to testify at a trial about
04:41:48 10 somebody you didn't see?

04:41:49 11 MR. KULWIN: Objection, your Honor. Argumentative.

04:41:50 12 THE COURT: Sustained. The objection is sustained.

04:41:52 13 MR. LOEVY: We ask that the answer be stricken too,
04:41:54 14 your Honor.

04:41:55 15 THE WITNESS: I didn't answer.

04:41:56 16 MR. LOEVY: When he said anybody would be unhappy.

04:41:58 17 THE WITNESS: I didn't say that.

04:41:59 18 MR. LOEVY: I will move on.

04:42:00 19 THE COURT: Overruled.

04:42:01 20 BY MR. LOEVY:

04:42:01 21 Q. Now, when Eric didn't come to trial, you testified at
04:42:06 22 trial, correct?

04:42:09 23 MR. KULWIN: Objection.

04:42:10 24 THE COURT: You have to rephrase the question,
04:42:12 25 please.

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04:42:12 1 BY MR. LOEVY:

04:42:13 2 Q. You testified at Nate's trial, didn't you?

04:42:15 3 A. I did, both of them.

04:42:17 4 Q. And you testified to the Court that you had procured an
04:42:23 5 identification from Eric Langston of Nathson Fields, didn't
04:42:26 6 you?

04:42:26 7 A. Both times, yes.

04:42:28 8 Q. All right. Take can a look at your testimony from June
04:42:31 9 18th, 1986, this is page 268, line 8:. Isn't it true you gave
04:42:36 10 the following testimony:

04:42:37 11 Who viewed the lineup, if you recall?

04:42:42 12 "ANSWER: The same three parties, Randy Langston and
04:42:45 13 Gerald Morris and Eric Langston.

04:42:46 14 "QUESTION: Did they follow the same procedure in
04:42:48 15 viewing the lineup as you used when the lineup was conducted
04:42:51 16 on Earl Hawkins?

04:42:52 17 "ANSWER: Yes

04:42:54 18 "QUESTION: And by that I mean they viewed it
04:42:56 19 separately?

04:42:57 20 "ANSWER: They did

04:42:58 21 "QUESTION: Did you say anything to these individuals
04:42:59 22 prior to them viewing the lineup?

04:43:01 23 "ANSWER: I just told them that they are not to speak
04:43:03 24 to each other and moved them to separate rooms

04:43:06 25 "QUESTION: Did any of the three make an identification

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04:43:10 1 of Nathson Fields at that time?

04:43:12 2 "ANSWER: And you said they did and the question was
04:43:15 3 who did they identify?

04:43:17 4 "ANSWER: They identified Mr. Fields as one of the
04:43:18 5 shooters

04:43:19 6 "QUESTION: All of them? Your answer was yes, they
04:43:22 7 did, correct

04:43:23 8 A. That's correct.

04:43:23 9 Q. At Mr. Fields' capital murder trial, you took the stand
04:43:26 10 and put your credibility behind that identification, didn't
04:43:29 11 you?

04:43:29 12 A. As I do in all cases.

04:43:32 13 MR. KULWIN: Objection, Judge, argumentative.

04:43:33 14 THE COURT: Overruled. He said as I do in all cases.
04:43:36 15 The answer can stand.

04:43:36 16 BY MR. LOEVY:

04:43:37 17 Q. And you asked the judge to accept the premise that Eric
04:43:40 18 Langston had legitimately identified Nate Fields, didn't you?

04:43:44 19 A. Yes, because he did.

04:43:45 20 MR. LOEVY: I have no further questions, I guess,
04:43:48 21 your Honor. I am not done with the witness.

04:43:50 22 THE COURT: Are you changing topics at this point?

04:43:51 23 MR. LOEVY: Yes.

04:43:52 24 THE COURT: We are pretty close to 4:45. We are
04:43:54 25 going to stop for the day. Remember tomorrow slightly earlier

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04:44:00 1 start time, 9:00 o'clock. Don't discuss the case. (The jury
04:44:46 2 leaves the courtroom.)

04:44:46 3 THE COURT: Okay. Since you're being questioned by
04:44:53 4 the other side's lawyer, you cannot discuss your testimony
04:44:55 5 with anyone. Do you understand?

04:44:57 6 THE WITNESS: I remember all those rules, yes, sir.

04:44:59 7 THE COURT: Anything anybody needs to take up?

04:45:01 8 MR. LOEVY: Something important from plaintiff, your
04:45:02 9 Honor.

04:45:03 10 MR. KULWIN: I'll yield.

04:45:04 11 MR. LOEVY: All right. Here is the issue, your
04:45:06 12 Honor.

04:45:06 13 THE COURT: You people don't have to be standing up
04:45:08 14 unless you really desperately want to.

04:45:11 15 MR. LOEVY: We received notification today that the
04:45:12 16 federal government has filed a motion to get a sentence
04:45:16 17 reduction for Derrick Kees. I haven't yet read the motion.

04:45:20 18 THE COURT: Okay.

04:45:21 19 MR. LOEVY: We are not asking your Honor to do
04:45:22 20 anything right now. We haven't read it. I would like to
04:45:25 21 point out that this is a civil case, this is a witness in a
04:45:29 22 civil case getting a benefit to testify. In my view that is
04:45:33 23 no different than if we had given Derrick Kees \$10,000 to
04:45:37 24 testify to our story. This is not a plea bargain in context.
04:45:40 25 He is getting a sentence break.

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04:45:41 1 THE COURT: Okay.

04:45:42 2 MR. LOEVY: To testify.

04:45:44 3 THE COURT: What are you asking?

04:45:45 4 MR. LOEVY: We are going to be asking you to bar him.

04:45:47 5 THE COURT: I've dealt with that motion I think three

04:45:49 6 or four times in this case.

04:45:50 7 MR. LOEVY: Well.

04:45:50 8 THE COURT: Maybe most of them before you were in it.

04:45:54 9 MR. LOEVY: The only difference is before they could

04:45:55 10 say it was in connection with the certificate of innocence

04:45:58 11 proceeding and the State of Illinois was involved, now this is

04:46:02 12 a civil matter.

04:46:02 13 THE COURT: Whatever the arguments were made, I

04:46:05 14 believe that the basis on which I denied the motion every time

04:46:08 15 it's been presented to me and I think -- I've written a lot of

04:46:12 16 stuff in this case. I think that one of these was in writing,

04:46:14 17 but I am not a hundred percent positive. I don't think that's

04:46:19 18 an appropriate remedy. It's a matter to take up on

04:46:21 19 cross-examination.

04:46:23 20 MR. LOEVY: All right. Then, your Honor, what we

04:46:25 21 would ask is a complete and total and full disclosure of, you

04:46:29 22 know, how is it that the federal government negotiated a plea

04:46:32 23 agreement for Derrick Kees in a case that the federal

04:46:34 24 government is not a party to the undisputed and sole benefit

04:46:38 25 of these parties.

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04:46:39 1 THE COURT: Do we know what the motion says?

04:46:41 2 MR. LOEVY: I know the title is the motion to reduce

04:46:44 3 sentence.

04:46:44 4 THE COURT: All right. Hang on a second. Let me see

04:46:48 5 if I can pull it up, just a second.

04:46:49 6 MR. KULWIN: Judge.

04:46:50 7 THE COURT: Let me see if I can pull it up here.

04:46:52 8 Just a second.

04:46:53 9 MR. KULWIN: Sure.

04:46:59 10 THE COURT: K-e-e-s?

04:47:05 11 MR. ART: Do you want the case number, your Honor?

04:47:08 12 THE COURT: No, it's easier to pull it up by his

04:47:11 13 name. Derrick do we think?

04:47:14 14 MR. ART: That's right.

04:47:15 15 MR. KULWIN: K-e-e-s-.

04:47:17 16 THE COURT: I've got it. I am going to assume it's

04:47:21 17 at the end. It's a relatively safe assumption.

04:47:27 18 Okay. It's docket number 5867. Let me take a look

04:47:34 19 at it. Well, just to be clear about it, the motion

04:47:50 20 specifically says that the sentence reduction is being granted

04:47:55 21 because of his anticipated testimony in this trial. The

04:48:02 22 government anticipates -- I am reading from page 2.

04:48:05 23 The government anticipates that Kees will soon

04:48:10 24 testify again in a Section 1980 trial in which El Rukn gang

04:48:12 25 member Nathson Fields was convicted of murder in 1986 alleges

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04:48:14 1 that he was framed by law enforcement. The trial before Judge
04:48:18 2 Kennelly began on Monday, November 13th, 2016.

04:48:22 3 Kees has agreed to provide truthful testimony in that
04:48:24 4 trial to show that Nathson Fields was not framed and in fact
04:48:26 5 participated in the murder. Because of this additional act of
04:48:29 6 substantial assistance did not become useful to the government
04:48:32 7 until long after his initial sentencing and because its
04:48:34 8 usefulness could not have reasonably been anticipated by Kees
04:48:38 9 through this motion, the government seeks a reduction in
04:48:41 10 sentence from Kees pursuant to Rule 35 asking to reduce it,
04:48:45 11 his federal sentence, from whatever it was before to 12 years,
04:48:49 12 so that he will be eligible for release in approximately
04:48:52 13 November 2021, the equivalent of his one-third federal parole
04:48:57 14 date.

04:48:57 15 You can read it yourself. It's about -- it's a
04:49:06 16 pretty long motion actually. It goes through a lot of
04:49:09 17 history. I'm guessing it's maybe in front of a judge who is
04:49:12 18 different from the one who sentenced him originally. It's
04:49:15 19 about a 19-page motion with about 30 pages of exhibits.

04:49:19 20 MR. LOEVY: Your Honor, we do intend to file
04:49:21 21 something, we hope you will at least hear what we have to say.

04:49:23 22 THE COURT: File what you are going to file. Do we
04:49:26 23 know -- are you calling him?

04:49:27 24 MR. LOEVY: We would call him if you don't bar him.

04:49:32 25 THE COURT: If I don't bar him, you will call him.

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04:49:34 1 MR. LOEVY: None of us wants a situation where we
04:49:36 2 find out later about deals or understandings or agreements. I
04:49:41 3 think we can -- we won't do it on the spot but to fully
04:49:45 4 disclose every communication between this table and the
04:49:47 5 federal government and, you know, how -- well, you get the
04:49:50 6 idea.

04:49:51 7 THE COURT: So, look, okay. Does anybody on the
04:49:53 8 other side want to talk about this at all? So the thing that
04:49:57 9 I think that I have on the table is a -- is a request for
04:50:02 10 discovery, I guess is what I would call it, request for
04:50:05 11 discovery of any communications between any person or
04:50:11 12 associated with the defense team and federal government
04:50:15 13 regarding Kees.

04:50:16 14 MR. LOEVY: Yes, at a minimum.

04:50:18 15 THE COURT: There you go. Does anybody have an
04:50:21 16 objection to me telling you to respond to that kind of request
04:50:25 17 in fairly short order?

04:50:27 18 MR. KULWIN: Well, I guess before I say anything,
04:50:29 19 Judge, I would say that Mr. Walsh and.

04:50:32 20 THE COURT: Who is Mr. Walsh.

04:50:33 21 MR. KULWIN: Tom Walsh from the civil division and
04:50:36 22 Mr. Kuhn sent an email to all parties some time ago, a couple
04:50:41 23 weeks ago, and said that all benefits that were given, every
04:50:46 24 single benefit that was given to Mr. Kees that was going to be
04:50:49 25 given -- that had been or will be given prior to his testimony

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04:50:55 1 will be disclosed by the federal government. They'll show
04:50:59 2 them everything that there is. So I think that that cuts to
04:51:03 3 the heart of they can cross-examine them all about it.

04:51:06 4 THE COURT: Like I say, I have given some comments
04:51:10 5 about the request to bar. I understand I'm going to get a
04:51:13 6 motion. That's not what I'm asking right now.

04:51:16 7 MR. KULWIN: You want to know all.

04:51:17 8 THE COURT: Would you like me to repeat myself.

04:51:19 9 MR. KULWIN: No, I don't have a problem with any of
04:51:22 10 my professional communications.

04:51:24 11 THE COURT: What does that mean?

04:51:25 12 THE WITNESS:

04:51:26 13 MR. KULWIN: Well, I have been friends with Jim Kuhn
04:51:30 14 for a long time. About his health, his kids.

04:51:33 15 THE COURT: Anything you all want to say, Mr. Noland
04:51:36 16 or Mr. Burns.

04:51:37 17 MR. NOLAND: We'd like to take a look at the motion.

04:51:39 18 THE COURT: What I'm entertaining right now is an
04:51:42 19 oral motion by Mr. Loevy asking to serve a discovery request
04:51:47 20 by letter, I assume, he is asking for any communications
04:51:52 21 between anybody associated with the defense. You will word it
04:51:57 22 however you want. And anybody associated with the federal
04:52:02 23 government related to Mr. Kees.

04:52:05 24 MR. NOLAND: I don't think we have any communication.
04:52:07 25 We sent a letter months ago asking for --

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04:52:09 1 THE COURT: You can serve that request. And it's
04:52:12 2 answerable within 24 hours after you serve it.

04:52:14 3 MR. LOEVY: Thank you, your Honor. Owe we object.

04:52:19 4 THE COURT: As far as the rest of it is concerned,
04:52:21 5 you will file whatever motion you are going to file when you
04:52:24 6 file it and I will deal with it.

04:52:25 7 MR. LOEVY: Thank you.

04:52:26 8 THE COURT: I will ask people if they want to respond
04:52:28 9 to it.

04:52:29 10 MR. KULWIN: I have something unrelated. It goes to
04:52:31 11 Mr. O'Callaghan's testimony. It goes to the whole motion in
04:52:34 12 limine idea, Judge.

04:52:35 13 THE COURT: The whole motion in limine idea?

04:52:40 14 MR. KULWIN: The motion in limine. This is how I
04:52:43 15 understand, Mr. Noland correct me if I'm wrong because I read
04:52:45 16 the transcripts a lot of times. At the second and -- the
04:52:49 17 second trial, I think the ruling was was that the way the
04:52:53 18 malicious prosecution claim was structured, this came up
04:52:56 19 before --

04:52:57 20 THE COURT: I am just going to tell you that if
04:52:59 21 you're going to talk to me about a ruling you made, you need
04:53:03 22 to do me the favor of showing it to me, particularly if it's
04:53:05 23 something that's made in the course of the transcript. If
04:53:08 24 it's a written ruling, I can pull it up very easily. If it's
04:53:11 25 a transcript, I need to see it.

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04:53:13 1 MR. KULWIN: We will need to get it to you early. It
04:53:15 2 really is -- the summary of it is and we will get that to you
04:53:20 3 tomorrow before court, the summary is that my understanding is
04:53:23 4 that the lawyers Sexton and Hogan can talk about the benefits
04:53:29 5 -- can talk the information the informants gave, the El Rukn
04:53:36 6 informants, but Murphy, Brannigan and O'Callaghan couldn't
04:53:40 7 testify what they knew. It had to come in through Hogan and
04:53:44 8 Sexton.

04:53:45 9 At the damages trial, though, you did allow
04:53:49 10 Mr. O'Callaghan to testify to show no malice that between 86
04:53:53 11 and 09 when he was prosecuted again, he knew about the
04:53:57 12 informants and now we're in a combined proceeding and I'm a
04:54:01 13 little -- that's why Mr. Noland and I the other day, he was
04:54:05 14 saying you can't do this and I was saying I intended to and
04:54:09 15 you said you better not do anything in violation. We will get
04:54:12 16 you the orders. That's my recollection.

04:54:14 17 THE COURT: I can't comment one way or the other
04:54:15 18 until I know -- like I say, do me the favor of showing me what
04:54:21 19 I said.

04:54:22 20 MR. LOEVY: If it's a motion to reconsider.

04:54:23 21 THE COURT: I don't know if it's a motion to
04:54:24 22 reconsider. The way it's being referred to is it's not a
04:54:27 23 motion to reconsider. I don't know one way or the other and I
04:54:31 24 am done talking about it.

04:54:32 25 What else?

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MR. LOEVY: Nothing from plaintiff.

04:54:34

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THE COURT: 9:00 o'clock, ready to go. Thanks.

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